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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 524

AKTIESELSKABET "CUZCO", AS OWNER OF THE NORWEGIAN STEAMSHIP "TOLUMA", PETITIONER,

vs.

STEAMSHIP "SUCARSECO," HER ENGINES, BOILERS, ETC., SUBMARINE BOAT CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 10, 1934.

CERTIORARI GRANTED DECEMBER 3, 1934.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A101-48

AKTIESELSKABET "CUZCO," as Owner of the Norwegian Steamship "TOLUMA," Libellant,

against

Steamship "SUCARSECO," Her Engines, Boilers, etc., SUBMARINE BOAT CORPORATION, Claimant

DOCKET ENTRIES

April 9, 1929. Filed libel and stipulation for costs.

May 20, 1929. Order entered substituting Kirlin, Campbell, Hickox, Keating & McGrann.

Dec. 10, 1929. Filed claim and stipulation for costs (Submarine Boat Corp.).

Dec. 10, 1929. Filed answer.

Dec. 11, 1929. Filed note of issue and notice of trial—Jan.

June 23, 1933. Filed consolidation and stipulation of facts—Patterson, J.

June 23, 1933. Filed opinion 7874, Patterson, J. (See Opinion.)

Aug. 7, 1933. Filed order amending amended libel by adding The Texas Co., & L. L. Jacobs as libellants.

Feb. 23, 1934. Filed final decree.

Feb. 24, 1934. Filed notice of appeal and allowance by appeal.

Feb. 24, 1934. Filed assignment of errors.

[fol. 2] In United States District Court, Southern District of New York

A103-152

Submarine Boat Corporation, as Owner, and Transmarine Corporation, as Charterer in Possession of the Steamship "Sucarseco" and as Bailee for Cargo Laden Thereon, Libellants,

against

Steamship "Toluma," Her Engines, Boilers, etc., the Aktieselskabet "Cuzco," as Owner, and Grace Line, Inc., as Charterer, Respondents

Docket Entries

Dec. 10, 1929. Filed libel and stipulation for costs.

Feb. 14, 1931. Filed notice of appearance and stipulation for costs. Grace Line and the S. S. "Cuzco."

Feb. 24, 1931. Filed claim and stipulation for costs (Aktieselskabet "Cuzco," claimant of S. S. "Toluma").

Mar. 6, 1933. Filed answer (Aktieselskabet "Cuzco").

[fol. 3] In United States District Court, Southern District of New York

A106-172

West India Oil Company and J. H. Senior, Agent, American Insurance Company, et al., Libellants,

against

Henry R. Sutphin and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, Respondents

Docket Entries

Dec. 29, 1930. Filed libel and stipulation for costs.

Jan. 2, 1931. Filed answer and stipulation for costs.

Jan. 6, 1931. Filed stipulation for costs.

Jan. 6, 1931. Filed note of issue and notice of trial—Feb. 1931.

Feb. 9, 1933. Filed comment and order providing that amended libel stand in place of libel and that answer to libel be deemed answer to amended libel. Goddard, J.

Feb. 9, 1933. Filed amended libel.

Aug. 7, 1933. Filed order amending libel by adding The Texas Co. and L. L. Jacobs as libellants.

[fol. 4] IN UNITED STATES DISTRICT COURT

LIBEL OF AKTIESELSKABET "CUZCO"

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The libel of Aktieselskabet "Cuzco," as owner of the Norwegian steamship "Toluma," against the steamship "Sucarseco," her engines, boilers, etc., in a cause of collision, civil and maritime, alleges upon information and belief as follows:

First. At all times hereinafter mentioned, the libelant Aktieselskabet "Cuzco" was and now is a corporation organized and existing under and pursuant to the laws of the Kingdom of Norway, and it was and is the owner of the steamship "Toluma."

Second. The steamship "Sucarseco" is now, or will be during the pendency of process hereunder, within the United States and within the jurisdiction of this Honorable Court.

Third. The steamship "Toluma" is a single-screw steel cargo steamship of 7,041 gross tons, 5,234 net tons, 417.8 feet long, and 54.4 feet in beam. Until the collision hereinafter mentioned, the "Toluma" was tight, staunch and strong, and in all respects seaworthy and properly manned, equipped and supplied.

On the night of November 22, 1928, the "Toluma" was proceeding from Norfolk, Va., to Bahia Blanca, loaded with general cargo. The third officer was on watch on the bridge, a quartermaster was at the wheel, and a lookout was stationed on the forecastlehead. The weather was clear and moonlight, and visibility high. While the "Toluma" was [fol. 5] proceeding on a course South 55° East, the masthead and range lights of a vessel, which afterwards proved to be the "Sucarseco," were sighted bearing nearly broad

on the "Toluma's" port bow; and, a short while later, the "Sucarseco's" green side light came in sight. The "Toluma" and the "Sucarseco" were on relative courses and positions so that they were crossing vessels within the meaning of the Rules for the Prevention of Collisions, the "Toluma" being on the starboard hand of the "Sucarseco," and the "Sucarseco" being on the port hand of the "Toluma"; and they continued in those relative positions until the collision hereinafter mentioned occurred. After she was first sighted, the "Sucarseco" continued approaching the "Toluma" at unabated speed and without change of course, her bearing remaining about the same on the "Toluma's" port bow. The "Toluma" held her course and speed as she was required to do under the rules; but the "Sucarseco" continued on without alteration of course or speed until she was close aboard. The "Toluma" sounded a signal of one blast, stopped her engines, and, as the "Sucarseco" failed to answer the "Toluma's" signal and continued on without change of course or speed, the "Toluma" put her engines full speed astern in an effort to avert collision or mitigate the damage. Shortly thereafter, the "Sucarseco" sounded a signal of two blasts and commenced altering course to her port. This maneuver carried the forward end of the "Sucarseco" clear of the "Toluma," but the "Sucarseco's" starboard quarter, swinging under the effect of a starboard helm, swung into the port bow of the "Toluma," causing serious damage to the latter. After the collision occurred, [fol. 6] it was found that the "Toluma" was leaking, and she returned to Norfolk, where, after discharging cargo, repairs were effected.

Fourth. The aforesaid collision and the damages resulting therefrom were not caused or contributed to by any fault or negligence on the part of the "Toluma," or those in charge of her, but were caused wholly by and due solely to fault and negligence on the part of the "Sucarseco," and those in charge of her, in the following respects, among others which will be brought out upon the trial:

1. In that she was not in charge of competent and careful persons.

2. In that she did not keep a good lookout.

3. In that although she had the "Toluma" on her starboard hand in a crossing situation, she did not keep out of the way of the "Toluma."

4. In that she did not port her helm seasonably and pass under the stern of the "Toluma," but attempted to pass ahead of the "Toluma."

5. In that she did not slacken her speed or stop or reverse her engines.

6. In that she violated the statutory rules of navigation applicable to the situation.

7. In that she did not do anything to avoid collision.

[fol. 7] Fifth. By reason of the premises, and as a result of the collision, the libelant has sustained damage, consisting of the cost of repairs, demurrage, cost of discharging cargo to effect repairs, and other incidental and consequential damages, which, so near as can now be estimated, amount to the sum of $90,000.00, no part of which sum has been paid, although payment thereof has been demanded.

Sixth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process in due form of law may issue against the steamship "Sucarseco", her engines, boilers, etc., and that all persons having or claiming any interest therein may be cited to appear and answer this libel, and that the steamship "Sucarseco" may be condemned and sold to pay the amount of libelant's claim, and that a decree may be entered in favor of the libelant against the said steamship "Sucarseco", her engines, boilers, etc., for the amount of the libelant's damages, with interest and costs, and that the court will grant to the libelant such other and further relief as the justice of the cause may require.

Kirlin, Woolsey, Campbell, Hickox & Keating, Proctors for Libelant and S. S. "Toluma", Office and P. O. Address, 27 William Street, Borough of Manhattan, City of New York.

[fol. 8] *Duly sworn to by William F. Cogswell. Jurat omitted in printing.*

[fol. 9] IN UNITED STATES DISTRICT COURT

ANSWER OF SUBMARINE BOAT CORPORATION TO LIBEL OF AKTIESELSKABET "CUZCO"

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Submarine Boat Corporation, as claimant of the Steamship "Sucarseco", to the libel of Aktieselskabet "Cuzco", as owner of the Steamship "Toluma", in a cause of collision, civil and maritime, alleges and respectfully shows to this Honorable Court as follows:

First. Claimant denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Article First of the libel.

Second. Claimant admits the allegations contained in Article Second of the libel.

Third. Upon information and belief, claimant denies each and every allegation contained in Article Third of the libel except in so far as the same are expressly modified or admitted in Article Seventh of this answer.

Fourth. Claimant denies each and every allegation contained in Article Fourth of the libel.

Fifth. Claimant denies each and every allegation contained in Article Fifth of the libel.

Sixth. Claimant admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court and denies that all and singular the premises of the libel are true, as alleged in Article Sixth thereof.

[fol. 10] Further answering the aforesaid libel, claimant alleges, upon information and belief, that the true facts and circumstances are as follows:

Seventh. On the evening of November 22, 1928, while the Steamship "Sucarseco," with a general cargo from New York destined for Pacific Coast ports via the Panama Canal, was southeast of Cape Henry, with running lights properly set and burning brightly, and all officers and members of her crew at their respective and proper stations, weather fair, sea smooth, visibility high, those in charge

of her observed abaft her starboard beam the port side light and well opened range lights of a vessel that subsequently proved to be the Steamship "Toluma".

The "Toluma" came up on the "Sucarseco" on a parallel course on which, if held, the "Toluma" would have overtaken and left the "Sucarseco" on her own port side with a wide margin of safety. The "Sucarseco" held her course and speed. When the "Toluma" came up to a position just forward of the "Sucarseco's" starboard beam, the "Toluma" was perceived to converge toward the "Sucarseco", at which juncture the "Toluma" blew a signal of one short blast on her whistle, indicating to those on board the "Sucarseco" that the "Toluma" was altering her course to her own starboard and away from the "Sucarseco", and in reliance thereon the "Sucarseco" held her course.

The "Toluma", instead of altering her course to her own starboard pursuant to her whistle signal of one blast as [fol. 11] aforesaid, suddenly and without warning swung to port toward the "Sucarseco". The "Sucarseco" thereupon immediately starboarded her helm and sounded two blasts on her whistle, indicating to those on the "Toluma" that she was directing her course to port and away from the "Toluma" in an endeavor to avert collision. When it was apparent that collision was imminent, those in charge of the "Sucarseco" put her helm hard aport, thereby causing the stern of the "Sucarseco" to swing away from the oncoming "Toluma", which maneuver, although unsuccessful in averting collision, lessened considerably the force of the blow of the "Toluma's" port bow as it came into contact with the starboard side of the "Sucarseco" in the way of her No. 4 hold, causing considerable damage to the "Sucarseco" and to her cargo.

Eighth. The said collision and consequent damage to the Steamship "Sucarseco" and her cargo were not caused or contributed to by any fault, neglect or want of care on the part of the libelants or those in charge of the Steamship "Sucarseco", but were due solely to the fault, neglect and want of care on the part of the Steamship "Toluma" and of the respondents, their agents, servants and employees in the following, among other, particulars, which will be pointed out at the trial of this suit:

1. In that those in charge of her were incompetent and inattentive to their duties.

2. In that those in charge of her failed and neglected to station and maintain a proper and efficient lookout.

3. In that the "Toluma", being the overtaking vessel, [fol. 12] failed to keep off and away from the "Sucarseco".

4. In that those in charge of her failed to hold her course while she was overtaking and passing the "Sucarseco".

5. In that those in charge of her failed to keep her off and away from the "Sucarseco."

6. In that those in charge of her permitted her to collide with and seriously damage the "Sucarseco" and her cargo.

7. In that those in charge of her failed and neglected to navigate in accordance with the one blast whistle signal which they blew to the "Sucarseco."

8. In that those in charge of her negligently starboarded her helm instead of porting her helm when she blew the one blast whistle signal to the "Sucarseco".

9. In that those in charge of her, after attempting to overtake and pass the "Sucarseco" on the "Sucarseco's" starboard hand, without warning, negligently altered her course to port.

10. In that those in charge of her failed seasonably to do anything to avoid collision, when risk of collision was, or should have been, apparent.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

[fol. 13] Wherefore, claimant prays that the libel herein be dismissed with costs, and that it may have such other and further relief as in law and justice it may be entitled to receive.

Single and Single, Proctors for Claimant, Office and P. O. Address, 15 William Street, Borough of Manhattan, New York City.

Duly sworn to by Henry R. Carse. Jurat omitted in printing.

[fol. 14] IN UNITED STATES DISTRICT COURT

LIBEL OF SUBMARINE BOAT CORPORATION, ET ANO.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The cross-libel of Submarine Boat Corporation, as owner, and Transmarine Corporation, as charterer in possession of the Steamship "Sucarseco" and as bailee for cargo laden thereon, against Steamship "Toluma", her engines, boilers, etc., the Aktieselskabet "Cuzco", as owner, and Grace Line, Inc., as charterer, in a cause of collision, civil and maritime, alleges, on information and belief, and respectfully shows to this Honorable Court as follows:

First. At all the times hereinafter mentioned the Submarine Boat Corporation was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, having its office and principal place of business at No. 5 Nassau Street, Borough of Manhattan, City, County and State of New York, and was and still is the sole owner of the American Steamship "Sucarseco", which, until the collision hereinafter referred to, was tight, staunch, strong and in all respects seaworthy and properly manned.

Second. At all the times hereinafter mentioned Transmarine Corporation was and still is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having an office for the transaction of business at 5 Nassau Street, Borough of Manhattan, City, County and State of New York, and was and still is the char-
[fol. 15] terer and operator of the Steamship "Sucarseco" and manned, victualed and navigated said vessel at its own expense or by its own procurement.

Third. At all the times hereinafter mentioned respondent, Aktieselskabet "Cuzco", was and still is a corporation organized and existing under and by virtue of the laws of the Kingdom of Norway and was and still is the owner of the Steamship "Toluma".

Fourth. At all the times hereinafter mentioned, respondent, Grace Line, Inc., was and still is a corporation organized and existing under and by virtue of the laws of the

State of New York, having an office at No. 10 Hanover Square, Borough of Manhattan, City, County and State of New York, and was at all the times hereinafter referred to the charterer and operator of the Steamship "Toluma".

Fifth. The Steamship "Toluma" is now, or during the pendency of process herein will be within this district and within the jurisdiction of this Honorable Court.

Sixth. On the evening of November 22, 1928, while the Steamship "Sucarseco" with a general cargo from New York destined for Pacific Coast ports via the Panama Canal was southeast of Cape Henry, with running lights properly set and burning brightly, and all officers and members of her crew at their respective and proper stations, weather fair, sea smooth, visibility high, those in charge of her ob- [fol. 16] served abaft her starboard beam the port side light and well opened range lights of a vessel that subsequently proved to be the Steamship "Toluma".

The "Toluma" came up on the "Sucarseco" on a parallel course on which, if held, the "Toluma" would have overtaken and left the "Sucarseco" on her own port side with a wide margin of safety. The "Sucarseco" held her course and speed. When the "Toluma" came up to a position just forward of the "Sucarseco" starboard beam, the "Toluma" was perceived to converge toward the "Sucarseco", at which juncture the "Toluma" blew a signal of one short blast on her whistle, indicating to those on board the "Sucarseco" that the "Toluma" was altering her course to her own starboard and away from the "Sucarseco", and in reliance thereon the "Sucarseco" held her course.

The "Toluma", instead of altering her course to her own starboard pursuant to her whistle signal of one blast as aforesaid, suddenly and without warning swung to port toward the "Sucarseco". The "Sucarseco" thereupon immediately starboarded her helm and sounded two blasts on her whistle, indicating to those on the "Toluma" that she was directing her course to port and away from the "Toluma" in an endeavor to avert collision. When it was apparent that collision was imminent, those in charge of the "Sucarseco" put her in helm hard aport, thereby causing the stern of the "Sucarseco" to swing away from the oncoming "Toluma", which maneuver, although unsuccessful in averting collision, lessened considerably the force of the blow of the Toluma's" port bow as it came into contact with

the starboard side of the "Sucarseco" in the way of her [fol. 17] No. 4 hold, causing considerable damage to the "Sucarseco" and to her cargo.

Seventh. The said collision and consequent damage to the Steamship "Sucarseco" and her cargo were not caused or contributed to by any fault, neglect or want of care on the part of the libelants or those in charge of the Steamship "Sucarseco", but were due solely to the fault, neglect and want of care on the part of the Steamship "Toluma" and of the respondents, their agents, servants and employees in the following, among other, particulars, which will be pointed out at the trial of this suit:

1. In that those in charge of her were incompetent and inattentive to their duties.

2. In that those in charge of her failed and neglected to station and maintain a proper and efficient lookout.

3. In that the "Toluma", being the overtaking vessel, failed to keep off and away from the "Sucarseco".

4. In that those in charge of her failed to hold her course while she was overtaking and passing the "Sucarseco".

5. In that those in charge of her failed to keep her off and away from the "Sucarseco".

6. In that those in charge of her permitted her to collide with and seriously damage the "Sucarseco" and her cargo.

7. In that those in charge of her failed and neglected to navigate in accordance with the one blast whistle signal [fol. 18] which they blew to the "Sucarseco".

8. In that those in charge of her negligently starboarded her helm instead of porting her helm when she blew the one blast whistle signal to the "Sucarseco".

9. In that those in charge of her after attempting to overtake and pass the "Sucarseco" on the "Sucarseco's starboard hand without warning, negligently altered her course to port.

10. In that those in charge of her failed seasonably to do anything to avoid collision, when risk of collision was, or should have been apparent.

Eighth. By reason of the foregoing, libelants have sustained damage in the making of repairs, survey fees and demurrage, and the cargo laden on board the "Sucarseco" has been damaged and survey fees and demurrage incurred thereon, all in the sum of Thirty-five thousand Dollars ($35,000) as nearly as the same can now be estimated, no part of which has been paid, although payment thereof has been duly demanded.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelants pray that process in due form of law and according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction [fol. 19] may issue against respondents and against said Steamship "Toluma", her engines, boilers, tackle, apparel and furniture, and that the respondents and all persons having or claiming to have any interest in the Steamship "Toluma" be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree to libelants their damages, with interest and costs, and that the Steamship "Toluma" be condemned and sold to satisfy the claim of libelants, and that libelants may have such other and further relief as in law and justice they may be entitled to receive.

Single and Single, Proctors for Libelant, Office & P. O. Address, 15 William Street, Borough of Manhattan, New York City.

Duly sworn to by Henry R. Carse. Jurat omitted in printing.

[fol. 20] In United States District Court

Answer of Aktieselskabet "Cuzco" to Libel of Submarine Boat Corporation, et ano.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Aktieselskabet "Cuzco," respondent, and claimant of the steamship "Toluma," to the cross-libel of Submarine Boat Corporation, as owner, and Transmarine

Corporation, as charterer in possession of the steamship "Sucarseco," and as bailee of the cargo laden thereon, in a cause of colision, civil and maritime, alleges as folows:

First. It denies it has any knowledge or information sufficient to form a belief as to the matters alleged in Article First of the cross-libel, except that it denies, on information and belief, that the steamship "Sucarseco," until the collision described in the cross-libel, was tight, staunch, strong, and in all respects, seaworthy and properly manned.

[fol. 21] Second. It denies that it has any knowledge or information sufficient to form a belief as to the matters alleged in the Second Article of the cross-libel.

Third. It admits the matters alleged in the Third Article of the cross-libel.

Fourth: It denies that it has any knowledge or information sufficient to form a belief as to the matters alleged in the Fourth Article of the cross-libel except that it admits, on information and belief, that Grace Line, Inc., was the charterer of the steamship "Toluma"; but it denies, on information and belief, that the said Grace Line, Inc., was the operator of the steamship "Toluma."

Fifth. It admits the matters alleged in the Fifth Article of the cross-libel.

Sixth. On information and belief, it denies the matters alleged in the Sixth Article of the cross-libel except such matters as may be herein specifically admitted.

Seventh. On information and belief, it denies the matters alleged in the Seventh Article of the cross-libel.

Eighth. On information and belief, it denies the matters alleged in the Eighth Article of the libel, except that it admits the making of demand and non-payment.

Ninth. On information and belief, it denies the matters alleged in the Ninth Article of the cross-libel except that [fol. 22] it admits the premises are within the admiraly and maritime jurisdiction of the United States and of this Honorable Court.

Further answering, the respondent and claimant alleges that the true facts and circumstances of the collision mentioned in the cross-libel are as follows:

Tenth. On the night of November 22, 1928, the "Toluma" was proceeding from Norfolk, Va., to Bahia Blanca, loaded with general cargo. The third officer was on watch on the bridge, a quartermaster was at the wheel, and a lookout was stationed on the forecastlehead. The weather was clear and moonlight, and visibility high. While the "Toluma" was proceeding on the course South 55° East, the masthead and range lights of a vessel, which afterwards proved to be the "Sucarseco," were sighted bearing nearly broad on the "Toluma's" port bow; and, a short while later, the "Sucarseco's" green side light came in sight. The "Toluma" and the "Sucarseco" were on relative courses and positions so that they were crossing vessels within the meaning of the Rules for the Prevention of Collisions, the "Toluma" being on the starboard hand of the "Sucarseco," and the "Sucarseco" being on the port hand of the "Toluma"; and they continued in those relative positions until the collision hereinafter mentioned occurred. After she was first sighted, the "Sucarseco" continued approaching the "Toluma" at unabated speed and without change of course, her bearing remaining about the same on the "Toluma's" port bow. The "Toluma" held [fol. 23] her course and speed as she was required to do under the rules; but the "Sucarseco" continued on without alteration of course or speed until she was close aboard. The "Toluma" sounded a signal of one blast, stopped her engines, and, as the "Sucarseco" failed to answer the "Toluma's" signal and continued on without change of course or speed, the "Toluma" put her engines full speed astern in an effort to avert collision or mitigate the damage. Shortly thereafter, the "Sucarseco" sounded a signal of two blasts and commenced altering course to her port. This maneuver carried the forward end of the "Sucarseco" clear of the "Toluma," but the "Sucarseco's" starboard quarter, swinging under the effect of a starboard helm, swung into the port bow of the "Toluma," causing serious damage to the later. After the collision occurred, it was found that the "Toluma" was leaking, and she returned to Norfolk, where, after discharging cargo, repairs were effected.

The aforesaid collision and the damages resulting therefrom were not caused nor contributed to by any fault or negligence on the part of the respondent and claimant or

of the "Toluma," or those in charge of her, but were caused wholly by and due solely to fault and negligence on the part of the cross-libelants and on the part of the "Sucarseco," and those in charge of her, in the following respects, among others, which will be brought out upon the trial:

1. In that she was not in charge of competent and careful persons.

2. In that she did not keep a good lookout.

[fol. 24] 3. In that although she had the "Toluma" on her starboard hand in a crossing situation, she did not keep out of the way of the "Toluma."

4. In that she did not port her helm seasonably and pass under the stern of the "Toluma," but attempted to pass ahead of the "Toluma."

5. In that she did not slacken her speed or stop or reverse her engines.

6. In that she violated the statutory rules of navigation applicable to the situation.

7. In that she did not do anything to avoid collision.

Eleventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the respondent and claimant of the steamship "Toluma" prays that the cross-libel herein be dismissed with costs and disbursements," and that this Honorable Court grant to the respondent and claimant, Aktieselskabet "Cuzco," such other and further relief as the justice of the cause may require.

Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for Respondent and Claimant, Office and Post Office Address, 27 William Street, Borough of Manhattan, New York City.

[fol. 25] *Duly sworn to by William H. McGrann. Jurat omitted in printing.*

[fol. 26] IN UNITED STATES DISTRICT COURT

Index No. 106-172

[Title omitted]

ORDER PERMITTING AMENDED LIBEL OF WEST INDIA OIL COMPANY ET AL. TO BE FILED IN PLACE OF ORIGINAL LIBEL—Feb. 9, 1933

Upon the subjoined consent signed by the proctors for the respondents in the above entitled suit and on motion of Bigham, Englar, Jones & Houston, proctors for libellants, it is

Ordered that the annexed amended libel and complaint be, and the same hereby is, ordered filed in place and stead [fol. 27] of the original libel filed herein, and that the answer of the Receivers heretofore filed to the original libel may stand as the answer of the said respondents to the amended libel.

Henry W. Goddard, U. S. D. J.

Consented to:

Single and Single, Proctors for Respondents.

IN UNITED STATES DISTRICT COURT

AMENDED LIBEL OF WEST INDIA OIL COMPANY ET AL.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The amended libel and complaint of West India Oil Company and J. H. Senior, Agent, American Insurance Company, Atlantic Mutual Insurance Company, Automobile Insurance Company, British & Foreign Marine Insurance Company, Connecticut Fire Insurance Company, Continental Insurance Company, Eagle Star & British Dominions Insurance Company, Federal Insurance Company, Fidelity Phenix Insurance Company, Firemen's Fund Insurance Company, Globe & Rutgers Fire Insurance Company, Great American Insurance Company, Home Insurance Company, Insurance Company of North America, Norwich Union Fire Insurance Company, Phoenix

Insurance Company, Providence-Washington Insurance Company, Royal Insurance Company, Sea Insurance Company, Standard Marine Insurance Com-
[fol. 28] pany, Thames & Mersey Marine Insurance Company, Union Insurance Society of Canton, Ltd., Union Marine Insurance Company, Universal Insurance Company, United States Fire Insurance Company, United States Merchants & Shippers Insurance Company, and others, Owner, Shipper and Underwriters of certain cargo laden on the Steamship "Toluma", against Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, in a cause of collision, civil and maritime, on information and belief, respectfully alleges as follows:

First. At and during all the times hereinafter mentioned, West India Oil Company, a New Jersey corporation, was owner, and J. H. Senior, agent, was shipper and agent for the owner of certain cargo laden on the steamship "Toluma," hereinafter set forth, and the insurance companies hereinafter named were insurers of said cargo or other cargo laden on the steamship "Toluma" and were corporations organized, existing and doing business by virtue of the laws of the several States of the United States:

American Insurance Company,
Atlantic Mutual Insurance Company,
Automobile Insurance Company,
British & Foreign Marine Insurance Company,
Connecticut Fire Insurance Company,
Continental Insurance Company,
Eagle Star & British Dominions Insurance Company,
Federal Insurance Company,
Fidelity Phenix Insurance Company,
[fol. 29] Firemen's Fund Insurance Company,
Globe & Rutgers Fire Insurance Company,
Great American Insurance Company,
Home Insurance Company,
Insurance Company of North America,
Norwich Union Fire Insurance Company,
Phoenix Insurance Company,
Providence-Washington Insurance Company,
Royal Insurance Company,
Sea Insurance Company,
Standard Marine Insurance Company,

Thames & Mersey Marine Insurance Company,
Union Insurance Society of Canton, Ltd.,
Union Marine Insurance Company,
Universal Insurance Company,
United States Fire Insurance Company,
United States Merchants & Shippers Insurance Company.

Second. The Submarine Boat Corporation and Transmarine Corporation are corporations organized and existing under and by virtue of the laws of the State of New Jersey and at the times hereinafter mentioned were respectively owner and operating agent of the steamship "Sucarseco". Henry R. Sutphen and Irving Trust Company were appointed Receivers for the Submarine Boat Corporation in an action in equity in the United States District Court for the Southern District of New York, entitled Hazlemont Corporation against Submarine Boat Corporation, by order of Honorable Alfred C. Coxe, Jr., District Judge, dated January 3, 1930, which order was extended by order dated [fol. 30] January 13, 1930, extending the receivership to include the Transmarine Corporation. Said Receivers duly qualified and are now acting as Receivers for the Submarine Boat Corporation and Transmarine Corporation.

Third. On the night of November 22, 1928, the steamship "Toluma" was proceeding from Norfolk, Virginia, to Bahia Blanca, loaded with general cargo. The weather was clear. It was moonlight and visibility was good. The "Toluma" was proceeding on a southeasterly course when the lights of a vessel, which later proved to be the steamship "Sucarseco", were sighted broad on the "Toluma's" port bow on a crossing course. The "Toluma" sounded a signal of one blast. The "Sucarseco" sounded a signal of two blasts. The S. S. "Sucarseco" was so negligently navigated that the starboard quarter of the "Sucarseco" came into collision with the port bow of the "Toluma", causing serious damage to the "Toluma". After the collision, it was found that the "Toluma" was leaking and she returned to Norfolk where, after discharging cargo, repairs were effected. Cargo was thereafter again laden on board and the ship proceeded to her destination. Upon delivery of the cargo at destination the shippers, consignees, or owners, were required to give, and did give, to the general average adjusters, general average bonds and the above-

named insurance companies insuring said cargo gave general average guarantees by which they agreed to pay any proper general average charges due with respect to said cargo.

Fourth. The aforesaid collision and the damages resulting therefrom were not caused or contributed to by your [fol. 31] libellants or by any persons for whom they were responsible, but were caused solely by fault and neglect on the part of the agents and servants of respondents in charge of the steamship "Sucarseco", in the following respects, among others, which will be brought out at the trial of this case:

1. In that those in charge of the steamship "Sucarseco" were incompetent and inattentive to their duties.

2. In that they did not keep a good lookout.

3. In that although the steamship "Toluma" was on the starboard hand of the steamship "Sucarseco" in a crossing situation, they did not maneuver to keep out of the way of the steamship "Toluma".

4. In that they did not port the helm of the "Sucarseco" seasonably and pass under the stern of the "Toluma", but attempted to pass ahead of the "Toluma".

5. In that they did not slacken her speed or stop or reverse her engines in time.

6. In that they did not blow proper signals.

7. In that they violated the statutory rules of navigation applicable to the situation.

8. In that they did nothing to avoid the collision.

Fifth. As a result of said collision and the consequent necessary discharge of cargo to permit repairs to the [fol. 32] S. S. "Toluma" to enable that vessel to continue her voyage, considerable damage was sustained by the cargo through extra handling. Certain expenses of a general average nature were also made and incurred for and on behalf of the ship and cargo, the sum necessary to pay the same being advanced by the shipowner in consideration of a commission of 2½% upon the disbursements, and upon security furnished by cargo interests for their share.

Messrs. Johnson & Higgins, of New York, average adjusters, were duly appointed to prepare, and did prepare and issue under date of September 24, 1929, a statement of general and particular average, adjusting and apportioning between vessel and cargo interests the general average disbursements as well as general average allowances made to vessel and cargo interests, all directly and necessarily caused by and resulting from the collision. In accordance with said general average adjustment, and pursuant to the terms of their general average bonds and guarantees given as aforesaid, your libellants as owners, shippers, consignees, guarantors and/or insurers, have been required to pay, and have paid to the adjusters their proper proportions of the general average in the total sum of approximately $45,000.00. Such payments of their proper proportions of the general average constitute legal damage sustained by the owners, shippers and/or consignees of said cargo by reason of the matters and things aforesaid. The above-named insurance companies, by reason of their payments as aforesaid, have become subrogated to the rights of the owners, shippers and/or consignees of said cargo against the S. S. "Sucarseco" and her owners and operators.

[fol. 33] Sixth. By reason of the premises, your libellants have sustained damage in the sum of approximately Forty Five Thousand and 00/100 ($45,000.00) Dollars, no part of which has been paid, although payment has been duly demanded.

Seventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellants pray that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, issue against Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, the respondents herein, and that the said respondents be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court be pleased to decree to your libellants their damages, with interest and costs, and that your libellants may have

such other and further relief as in law and justice they may be entitled to receive.

Bigham, Englar, Jones & Houston, Proctors for Libellants, Office and P. O. Address, No. 64 Wall Street, Borough of Manhattan, New York City.

[fol. 34] *Duly sworn to by William Simonson. Jurat omitted in printing.*

In United States District Court

Answer of Henry R. Sutphen et ano. to Amended Libel of West India Oil Company et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, to the libel and complaint of West India Oil Company et al. against Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat [fol. 35] Corporation and Transmarine Corporation, respectfully shows to this Honorable Court as follows:

First. Respondents deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in Article First of the libel.

Second. As to Article Second of the libel, respondents admit that Submarine Boat Corporation is a corporation of the State of New York, and Transmarine Corporation is a corporation of the State of New Jersey, and admit all the other allegations contained in Article Second of the libel.

Third. Upon information and belief, respondents deny each and every allegation contained in Article Third of the libel except in so far as the same are expressly modified or admitted in Article Ninth of this answer.

Fourth. Respondents deny each and every allegation contained in Article Fourth of the libel.

Fifth. Respondents deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in Article Fifth of the libel.

Sixth. Respondents deny each and every allegation contained in Article Sixth of the libel.

Seventh. As to Article Seventh of the libel, respondents admit the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but deny the other allegations of Article Seven.

[fol. 36] Further Answering the Libel Herein Respondents Allege Upon Information and Belief That the True Facts and Circumstances are as Follows:

Eight. Respondents reallege Articles First to Seventh, inclusive, with the same force and effect as if the same were set forth in detail.

Ninth. On the evening of November 22, 1928, while the Steamship "Sucarseco", with a general cargo from New York destined for Pacific Coast ports, via the Panama Canal, was southeast of Cape Henry, with running lights properly set and burning brightly, and all officers and members of her crew at their respective and proper stations, weather fair, sea smooth, visibility high, those in charge of her observed abaft her starboard beam the port side light and well opened range lights of a vessel that subsequently proved to be the Steamship "Toluma."

The "Toluma" came up on the "Sucarseco" on a parallel course on which, if held, the "Toluma" would have overtaken and left the "Sucarseco" on her own port side with a wide margin of safety. The "Sucarseco" held her course and speed. When the "Toluma" came up to a position just forward of the "Sucarseco's" starboard beam, the "Toluma" was perceived to converge toward the "Sucarseco", at which juncture the "Toluma" blew a signal of one short blast on her whistle, indicating to those on board the "Sucarseco" that the "Toluma" was altering her course to her own starboard and away from the "Sucarseco", and in reliance thereon the "Sucarseco" held her course.

[fol. 37] The "Toluma", instead of altering her course to her own starboard pursuant to her signal whistle of one blast as aforesaid, suddenly and without warning swung to port toward the "Sucarseco". The "Sucarseco" thereupon immediately starboarded her helm and sounded two blasts on her whistle, indicating to those on the "Toluma"

that she was directing her course to port and away from the "Toluma" in an endeavor to avert collision. When it was apparent that collision was imminent, those in charge of the "Sucarseco" put her helm hard aport, thereby causing the stern of the "Sucarseco" to swing away from the oncoming "Toluma", which maneuver, although unsuccessful in averting collision, lessened considerably the force of the blow of the "Toluma's" port bow as it came into contact with the starboard side of the "Sucarseco" in the way of her No. 4 hold, causing considerable damage to the "Sucarseco" and to her cargo.

Tenth. The said collision and subsequent damage, if any, to the Steamship "Toluma" and her cargo, were not caused or contributed to by any fault, neglect or want of care on the part of the respondents or those in charge of the Steamship "Sucarseco", but were due solely to the fault, neglect and want of care on the part of the Steamship "Toluma" or those in charge thereof in the following, among other particular, which will be pointed out at the trial of this suit:

1. In that those in charge of the "Toluma" were incompetent and inattentive to their duties.

2. In that those in charge of the "Toluma" failed and [fol. 38] neglected to station and maintain a proper and efficient lookout.

3. In that the "Toluma" being the overtaking vessel failed to keep off and away from the "Sucarseco".

4. In that those in charge of the "Toluma" failed to hold her to her course while she was overtaking and passing the "Sucarseco".

5. In that those in charge of the "Toluma" failed to keep her off and away from the "Sucarseco".

6. In that those in charge of the "Toluma" failed and neglected to navigate in accordance with the one blast whistle signal which they blew to the "Sucarseco".

7. In that those in charge of the "Toluma" negligently starboarded her helm instead of porting her helm when she blew the one blast whistle signal to the "Sucarseco".

8. In that those in charge of the "Toluma", after she had attempted to overtake and pass the "Sucarseco" on the

"Sucarseco's" starboard hand, without warning, negligently altered her course to port.

9. In that those in charge of the "Toluma" failed to seasonably do anything to avoid collision when risk of collision was, or should have been, apparent.

Wherefore, respondents pray that the libel herein be dis- [fol. 39] missed with costs, and that they may have such other and further relief as to the Court may seem just and proper.

Single and Single, White & Case, Proctors for Respondents Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, Office and P. O. Address, 15 William Street, Borough of Manhattan, City of New York.

Duly sworn to by Henry R. Sutphen. Jurat omitted in printing.

[fol. 40] IN UNITED STATES DISTRICT COURT

AKTIESELSKABET CUZCO, Owner of the Steamship "TOLUMA", Libellant,

against

Steamship "SUCARSECO", her engines, boilers, etc., and SUBMARINE BOAT CORPORATION, Claimants

(and Two Other Cases)

ORDER AMENDING AMENDED LIBEL OF WEST INDIA OIL COMPANY ET AL.—Aug. 5, 1933

On the subjoined consent signed by the proctors for the respective parties hereto and on motion of Bigham, Englar, Jones & Houston, proctors for cargo libellants, it is

Ordered that the amended libel of West India Oil Company, J. H. Senior, Agent, American Insurance Company, et al., be further amended by including in the title and in [fol. 41] paragraph First thereof among the named libellants the following additional libellants: The Texas Company and L. L. Jacobs. And it is further

Ordered that the foregoing is without prejudice to all proceedings heretofore taken in the above entitled consolidated cause and that cause shall proceed as if the aforenamed new libellants had been original libellants named in the libel of West India Oil Company, et al.

Alfred C. Coxe, U. S. D. J.

Consented to:

Single, Atkins, Middleton & Tyler, Proctors for Submarine Boat Corporation and Henry R. Sutphen and Irving Trust Company, as Receivers for Submarine Boat Corporation and Transmarine Corporation. Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for Atkieselskabet Cuzco, Libellant and Claimant.

[fol. 42] IN UNITED STATES DISTRICT COURT

101-148

[Title omitted]

103-152

[Title omitted]

[fol. 43] IN UNITED STATES DISTRICT COURT

106-172

[Title omitted]

ORDER OF CONSOLIDATION AND SUBMISSION UPON AN AGREED STATEMENT OF FACTS—Feb. 23, 1933

A collision having occurred between the Norwegian steamship "Toluma" and the American steamship "Sucarseco" at sea on the night of November 22, 1928, resulting in certain damage to each vessel and to the cargo on board the steamship "Toluma"; and the first above entitled libel having been thereafter filed by the owners of the "Toluma" against the "Sucarseco"; and the second above entitled cross-libel having been thereafter filed by

the owners and charterers of the "Sucarseco" against the "Toluma", her owners and agents; and the third above entitled libel having been filed by the owners, shippers, consignees, guarantors and/or insurers of cargo on the steamship "Toluma" against the receivers of the owners and charterers respectively of the steamship "Sucarseco" by permission of this court granted in its order entered on or about December 26, 1930, in the equity suit of Max Doyne and Hazelmont Corporation, complainants, against Submarine Boat Corporation and Transmarine Corpora-[fol. 44] tion, defendants; and leave having heretofore been granted by this court by an order entered in the said equity suit, dated April 29, 1931, to consolidate the above entitled libels and cross-libels all relating to said collision between the steamship "Toluma" and the steamship "Sucarseco"; and the parties to said actions by their respective proctors having agreed that the collision described in said libels and cross-libel and the damages resulting therefrom were caused jointly and equally by faults or errors in navigation of the steamship "Sucarseco" and the steamship "Toluma", and those in charge of the navigation of the said steamships, and that the said collision and damages resulting therefrom were not caused or contributed to by unseaworthiness of the said vessels, nor by lack of due diligence on the part of the respective owners thereof to make the said vessels seaworthy in all respects; and the said parties and their respective proctors having entered into a stipulation of agreed facts hereto annexed, but being unable to agree as to the rights of recoveries and/or amounts due and/or property allowable among the respective parties hereto, and as the proper distribution of the said amounts, as matter of law; and, furthermore, the said parties and their respective proctors having agreed that the said questions of law be submitted to this court in this consolidated cause, upon the said agreed statement of facts;

Now, on the subjoined consents, it is by the court.

[fol. 45] Ordered that the above entitled actions be and they hereby are consolidated, and shall hereafter proceed as one cause under the following caption:

"Aktieselskabet Cuzco, Owner of the Steamship 'Toluma', Libellant,

against

Steamship 'Sucarseco', Her Engines, Boilers, etc., and Submarine Boat Corporation, Claimants

(and Two Other Cases)"

and it is further

Ordered that this order of consolidation shall not alter in any way the rights of any party hereto with respect to any security which may have been obtained by any of the parties in any of the suits above entitled; and it is further

Ordered that nothing herein contained shall prejudice or vary the right of any party to institute and maintain limitation of liability proceedings; and it is further

Ordered that the consolidated cause be and the same hereby is submitted to this court for determination and decree upon all the pleadings and stipulations in the several libels and cross-libel above entitled, and upon the subjoined stipulation of agreed facts and the documents referred to in paragraph 6 thereof.

Robert P. Patterson, U. S. D. J.

[fol. 46] We hereby consent to the entry of the foregoing order.

Dated New York, February 23, 1933.

Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for S. S. "Toluma", Aktieselskabet Cuzco, and Grace Line, Inc.

Single and Single, Proctors for S. S. "Sucarseco", Submarine Boat Corporation, and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation.

Bigham, Englar, Jones & Houston, Proctors for Libelants, West India Oil Company, et al. ("Toluma" cargo).

[fol. 47] In United States District Court, Southern District of New York

Aktieselskabet Cuzco, Owner of the Steamship "Toluma," Libelant,

against

Steamship "Sucarseco," Her Engines, Boilers, etc., and Submarine Boat Corporation, Claimants

(and Two Other Cases)

Stipulation of Agreed Facts

It is hereby stipulated and agreed:

1. That the collision of November 22, 1928, between the S. S. "Sucarseco" and the S. S. "Toluma" was caused jointly and equally by the fault or errors in navigation of the steamship "Sucarseco" and the steamship "Toluma," and those in charge of the navigation of the said steamships, and that the said collision and damages resulting therefrom were not caused or contributed to by unseaworthiness of the said vessels, nor by lack of due diligence on the part of the respective owners thereof to make the said vessels seaworthy in all respects.

2. That the following items of damage only are deemed to have been caused by the collision and to be provable, proved and allowed in this consolidated cause, without interest and without costs up to the date of this stipulation, but interest to run on the principal sums thereof from the date of this stipulation, and the costs of the respective parties hereafter accruing to be apportioned in accordance [fol. 48] with the practice of this Court; recovery of said items of damage to be awarded to and against the respective parties hereto to such an extent and in such proportions as may be determined by the decision of this Court, or an appellate court, in the event of appeal, to be in accordance with the respective rights of the parties, under the agreed circumstances of this case as herewith submitted:

(a) The owners of the S. S. "Sucarseco" disbursed the sum of $10,889.46, by reason of necessary repairs and

expenses in connection therewith, and were damaged in the further sum of $4,000, by reason of the detention of .the vessel, and may be further damaged to the extent of the amount which West India Oil Company et al., the cargo libelants herein, may recover by reason of the claims for damages asserted by the said cargo libelants, in the libel of the said cargo libelants against Henry R. Sutphen and Irving Trust Company, receivers for Submarine Boat Corporation and Transmarine Corporation, as respondents, or otherwise, consisting of proportions of general average paid by the said cargo libelants as shown to be due as contributions from the said cargo libelants in the general average statement issued by Johnson & Higgins, average adjusters, dated New York, September 24, 1929.

(b) The owners of the S. S. "Toluma" disbursed the sum of $64,337.63, by reason of necessary repairs and expenses due to the collision, and were damaged in the further sum of $16,453.20, by reason of the detention of the vessel.

(c) The cargo on board the S. S. "Toluma" sustained physical damage in the sum of $2,956.89, all of which was of a general average nature and itemized as such in said [fol. 49] adjustment at pages 120 to 129 thereof, inclusive.

3. That a certain portion (as shown in par. 4) of the disbursements and damages of the owners of the S. S. "Toluma," set forth in paragraph 2 (b), and all of the physical damage of the "Toluma" cargo, set forth in paragraph 2 (c) were of a general average nature and were among others stated in a general average adjustment issued by Johnson & Higgins, average adjusters, dated New York, September 24, 1929.

4. (a) That of the disbursements of the owners of the "Toluma" totaling $64,337.63, set forth in paragraph 2 (b) hereof, a total of $35,828.45 was stated in said adjustment as general average in the particular amounts shown in the items numbered 1 to 62 inclusive, 65 to 71 inclusive, and 73 to 95 inclusive.

(b) That the detention damage totaling $16,453.20, sustained by the owners of the S. S. "Toluma" as set forth in paragraph 2 (b) hereof, included certain items of laid up and running expenses during repairs which were of a general average nature and were stated as such in said ad-

justment at the following pages thereof and in the following amounts:

Page	Amount
133	$4,097.98
	25.32
135	371.20
Total	$4,494.50

5. That of the amounts heretofore stated as disbursements and/or expenses, and/or damages, of the "Toluma" [fol. 50] and her owner, and of cargo on the "Toluma" and owners thereof respectively, in 2 (b) and 2 (c) herein, the total sum of $43,279.84 is of a general average nature, and so stated in the general average adjustment mentioned in paragraph 3 above; and, in accordance with the contributing values of the Vessel interests ("Toluma" and owner), and the Cargo interests, shown on pages 144 and 145 of the said general average adjustment, the apportionment of the said sum of $43,279.84, for contribution in general average is in the sum of $3,885.83 from the "Toluma" and her owner, and in the sum of $39,394.01 from Cargo on the "Toluma" and owners thereof.

6. That this consolidated cause is to be submitted on the following further evidence:

(a) A copy of the form of bills of lading constituting the contract of affreightment and carriage between the shipper or the agent of the owner of the property carried on the S. S. "Toluma" and the said S. S. "Toluma," including all clauses therein forming the conditions and terms of the said contract.

(b) A copy of said general average statement of Johnson & Higgins, average adjusters, dated New York, September 24, 1929, with certain items numbered to facilitate reference thereto in this stipulation, which is to be taken as true evidence of all the facts therein set forth, including statements of master, survey reports, statements of charges, expenses, allowances, etc. (except as modified by this stipulation), it being further agreed that the general average has been duly and properly apportioned by said adjusters according to York-Antwerp Rules of 1890, and as [fol. 51] to matters not therein provided for according to

the laws and usages at the port of New York, and the practice of average adjusters and that some of the cargo libelants as owners, shippers, consignees, guarantors or insurers have paid to the adjusters the full proportions of general average shown to be due with respect to certain shipments of cargo according to said statement and that the amounts paid by each may be further shown upon a reference, or in such other manner as may be authorized by the Court.

(c) A copy of the form of general average bond and of the form of general average guaranty taken by the adjusters from the various consignees of cargo and/or underwriters in this case.

Dated New York, February 23, 1933.

Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for S. S. "Toluma," Aktieselskabet Cuzco, and Grace Line, Inc.

Single & Single, Proctors for S. S. "Sucarseco," Submarine Boat Corporation, and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation.

Bigham, Englar, Jones & Houston, Proctors for Libelants, West India Oil Company et al. ("Toluma" Cargo).

[fol. 52] BILL OF LADING SUBMITTED WITH STIPULATION OF AGREED FACTS

(Photoprint)

[For the convenience of Court and Counsel this Exhibit (photostatic copy) is bound in on the opposite page.]

The following extract from paragraph 12 of the exhibit is the provision referred to as the Jason Clause:

"In case of danger, damage or disaster resulting from accident or from faults or errors in navigation or in the management of or from any latent or other defect of the vessel, her machinery or appurtenances, from unseaworthiness, even though existing at the time of shipment or at

the beginning of the voyage, if the defect or unseaworthiness was not discoverable by the exercise of due diligence and if the ship-owner shall have exercised due diligence to make the vessel seaworthy and properly manned, equipped and supplied with respect to the matters concerned in the aforesaid danger, damage or disaster, then the shippers, consignees or owners of the cargo or the holders of this bill of lading shall nevertheless pay salvage and any special charges incurred in respect of the cargo and shall contribute with the shipowners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure of any common peril, all with the same force and effect and to the same extent as if such accident, danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation or in the management of the vessel or by any latent or other defect or unseaworthiness."

(Here follows photolithograph, side folio 53.)

G. L. 2309

GRA

10 HANOVER
for WEST COA

Should the ship named in this bill of lading be a motor

Received, in apparent good order and con
by the American Steamship named on the reverse side h
of New York, for carriage to the port named on the rev
port to proceed to, and stay at, any ports or places what
said port of discharge), once or oftener, in any order, ba
purpose whatsoever, and also to proceed via Straits of M
be deemed included within the intended voyage; this lib
written or printed, with liberty to carry goods of all ki
marked and numbered as on the reverse side hereof (we
tackles in like order and condition at the port named on
detention or delay), unto the consignee named on the r
if any incurred.

☞ *NOTICE—This Bill of Lading constitutes the contr
carried and the "Grace Line."*

1. The goods to be discharged from the ship as soon as sh
agents of the vessel, at the risk and expense of the owners of the
2. It is hereby expressly agreed that the freight having be
without recovery, upon receipt of the goods into the custody of t
hereinafter mentioned the said steamship is to have the right to fo
receive extra compensation for such service, whether performed by
aforesaid merchandise or treasure during the voyage by a vessel o
vessels belonged to strangers.
3. It is mutually agreed that the ship shall have liberty to
vessels in all situations, to deviate for the purpose of saving life o
any cause from commencing with or proceeding in the ordinary co
ship, that the carrier is authorized to forward or transship the good
4. It is also mutually agreed that the carrier shall not be li
other waters, by fire from any cause or wheresoever occurring; by
princes, rulers or people; riots, strikes or stoppages of labor; by ex
appurtenances, by collisions, stranding, or other accidents of navig
judgment of the pilot, master, mariners or other servants of the ship
ship or any of them, or by the ship's husband or manager; by unse
the owners have exercised due diligence to make the vessel seaworth
acter, drainage, leakage, breakage, vermin, nor for damage or deter
nature of the goods or the insufficiency of packages; nor for land d
addressees or descriptions, nor for risk of craft, bulk or transshipme
of any kind to articles perishable in their nature; and that the carr
weight, contents and value.
5. The freight on the cargo carried hereunder is regulated
cargo. Unless a higher value shall be declared and written in this
eral cargo shall be taken to be not more than $100, or in case of hou
case of bulk cargo, $200 per freight ton; and in case of total loss o
respectively, not exceeding the invoice value in any case. Any part
the amounts above indicated, respectively, or on the invoice value,
the difference between the damaged value and the value hereinabove
of the goods, or the holder of this bill of lading, the shipowner shall
on behalf of the insurers thereof, whether under the guise of advan
6. Also, that shippers shall be liable for any loss or damage
full disclosure of their nature whether such shipper be principal or
compensation.
7. Also, that the carrier shall have a lien on the goods for all
or suffer by reason of the incorrect or insufficient marking, numberi
impost, of whatever nature, levied upon the steamer, by the authorities
8. This cargo is received on the express condition that if it
port for which they are intended, whether through Custom House
war, strike, lockout, labor troubles, disturbances, blockade or interd
whatsoever which the carrier cannot remedy, the Master is to have
consider safe, or of retaining same on board until the steamer's retu
compensation over and above the amount of prepaid freight, as per th
port of destination; or of transshipping same at any other port he
or consignee of the goods; such discharge or transshipment shall be
addressed to the shipper, or consignee if named in bill of lading, sta
this option may be availed of by Master at any time, either before co
thereon for all extra expenses incurred in consequence; and the carri
without notice, to transship the goods, at the carrier's expense, but at
vessel, steam or sail, whether owned or employed by the said line. It
have the option of requiring consignees to furnish lighters to take de
9. Also, that the Master of the vessel has the right of hiring
risk of the owners of said goods; and if [illegible]
shall cease [illegible]

CAREFULLY READ THIS BILL OF LADING

relative to the restrictions, fines and penalties imposed on any person or persons
owning, Turpentine, Nitro-Glycerine, Camphor, Petroleum or its products. Nitric or

Bill of Lading Submitted With Stipulation of Agreed Facts.

G. L. 2309

GRACE LINE

10 HANOVER SQUARE, NEW YORK

for WEST COAST of SOUTH AMERICA

Should the ship named in this bill of lading be a motor vessel, the word "Steamship" will be held to cover and include the term "Motor V

Received, in apparent good order and condition, from the Shippers named on the reverse side hereof, to be transported by the American Steamship named on the reverse side hereof and/or any other Steamship of the line now at or proceeding to the port of New York, for carriage to the port named on the reverse side hereof, but with liberty either before or after proceeding towards that port to proceed to, and stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge), once or oftener, in any order, backwards or forwards, for loading or discharging cargo or passengers, or for any purpose whatsoever, and also to proceed via Straits of Magellan, Cape Horn or Panama Canal, and all such ports, places and sailings shall be deemed included within the intended voyage; this liberty is not to be considered as restricted by any words in this contract, whether written or printed, with liberty to carry goods of all kinds whether on deck or under deck and whether dangerous or otherwise; being marked and numbered as on the reverse side hereof (weight, quality, contents and value unknown): and to be delivered from the ship's tackles in like order and condition at the port named on the reverse side hereof (or so near thereto as the vessel may safely get without detention or delay), unto the consignee named on the reverse side hereof, or to his or their assigns, they paying average accustomed if any incurred.

☞ *NOTICE—This Bill of Lading constitutes the contract, between the shipper or the agent of the Owner of the property carried and the "Grace Line."*

1. The goods to be discharged from the ship as soon as she is ready to unload into lighter, hulk, temporary depot, or lazaretto, if necessary, by the agents of the vessel, at the risk and expense of the owners of the goods.

2. It is hereby expressly agreed that the freight having been prepaid by the shippers, became wholly due, and belonged absolutely to the steamer, without recovery, upon receipt of the goods into the custody of the said steamer, ship lost or not lost; and on the happening of any of the contingencies hereinafter mentioned the said steamship is to have the right to forward the above mentioned packages to the port of destination on its own route, and shall receive extra compensation for such service, whether performed by the vessels of this line or those of strangers; and in case of salvage services rendered to aforesaid merchandise or treasure during the voyage by a vessel of the said line, such salvage services shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

3. It is mutually agreed that the ship shall have liberty to sail without pilots; to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the ordinary course of her voyage, or should the goods or any part of them be shut out from said steamship, that the carrier is authorized to forward or transship the goods to their destination by any other vessel, steam or sail at shipper's risk.

4. It is also mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause or wheresoever occurring; by barratry of the master or crew, by enemies, pirates or robbers, by arrest and restraint of princes, rulers or people; riots, strikes or stoppages of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation, of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the shipowner, not resulting, however, in any case from want of due diligence by the owners of the ship or any of them, or by the ship's husband or manager; by unseaworthiness of the ship, even existing at time of shipment or sailing on the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; nor for heating, effects of climate, heat of hold, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, nor for damage or deterioration caused by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency of, or absence of marks, numbers, addresses or descriptions, nor for risk of craft, hulk or transshipment; nor for any loss or damage caused by the prolongation of the voyage, nor for damage of any kind to articles perishable in their nature; and that the carrier shall not be concluded as to the correctness of statement herein of quantity, quality, weight, contents and value.

5. The freight on the cargo carried hereunder is regulated in consideration of all the terms of this contract and is based partly on the value of the cargo. Unless a higher value shall be declared and written in this bill of lading and freight paid thereon accordingly, the valuation of each package of general cargo shall be taken to be not more than $100, or in case of household goods or personal effects, not more than $5.00 for every 100 pounds, or in the case of bulk cargo, $200 per freight ton; and in case of total loss or short delivery, the shipowner shall not be liable for more than the amounts so indicated respectively, not exceeding the invoice value in any case. Any partial loss or damage for which the shipowner may be liable shall be adjusted pro rata on the amounts above indicated, respectively, or on the invoice value, whichever shall be the least. The shipowner shall not be liable in any event for more than the difference between the damaged value and the value hereinabove agreed. Insofar as the shipowner may be held liable to the owner, shipper, or consignee of the goods, or the holder of this bill of lading, the shipowner shall be entitled to the benefit of any insurance on the goods and to any payments made by or on behalf of the insurers thereof, whether under the guise of advances, loans or in any other manner whatsoever.

6. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

7. Also, that the carrier shall have a lien on the goods for all freight and charges and also for all fines or damage which the ship or cargo may incur or suffer by reason of the incorrect or insufficient marking, numbering and addressing of packages, or description of their contents; or for any duty, tax or impost, of whatever nature, levied upon the steamer, by the authorities at the Port of Discharge, for or in connection with the goods herein described.

8. This cargo is received on the express condition that if it should be impracticable or unsafe in the opinion of the master to land the goods at the port for which they are intended, whether through Custom House not being able to receive it, through weather, earthquake, epidemic, quarantine, riot, war, strike, lockout, labor troubles, disturbances, blockade or interdict,, congestion of port, lack of launches or other elements of discharge or for any cause whatsoever which the carrier cannot remedy, the Master is to have the option of discharging all or any part of the goods at any other port which he may consider safe, or of retaining same on board until the steamer's return trip, in which case steamer shall be entitled, for such extra service, to a reasonable compensation over and above the amount of prepaid freight, as per this bill of lading; or of transferring same to hulks, craft or other vessel, steam or sail, in port of destination; or of transshipping same at any other port he or the steamer's agent may think convenient, at risk and expense of the shipper, owner or consignee of the goods; such discharge or transshipment shall be deemed final delivery under this contract, and upon a letter being put into the post office addressed to the shipper, or consignee if named in bill of lading, stating such discharge or transshipment the carrier shall be relieved from all responsibility; this option may be availed of by Master at any time, either before commencing or during process of discharge, and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the carrier shall have the right under any and all other circumstances or at their option, and without notice, to transship the goods, at the carrier's expense, but at the shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam or sail, whether owned or employed by the said line. It is also agreed that the Master or agents of the steamer at the port of destination shall have the option of requiring consignees to furnish lighters to take delivery of the within described merchandise.

9. Also, that the Master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods at the expense and risk of the owners of said goods; and if this in his judgment is inexpedient, the goods to be taken from the ship's tackles where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the Master at the expense of the consignee, and at his risk of fire, loss or injury, as the authorities at the port of discharge shall direct. If by reason of lack of lighters, cars or discharging facilities of any nature whatsoever, in the Master's opinion, the vessel is likely to be detained beyond the time required under ordinary circumstances to discharge the within goods, he is at liberty to proceed on his voyage with the whole or any portion of the within goods remaining on board, to be discharged on steamer's return trip subject to the payment of a reasonable compensation in the same manner as provided in clause 8 of this bill of lading, or at the option of the Master to forward them to destination from the first convenient port he may subsequently call at, at the risk and expense of the consignees, and the carrier shall not be responsible for damage or loss as the consequence thereof.

10. Also, that if any bags of grain, flour, coffee, cocoa, or similar cargo be landed slack or torn, the consignee shall accept such proportion of the sweepings as shall be allotted by the agents of the carrier and the same shall be deemed a full settlement of any claim for loss in weight.

11. Also, that the shippers are hereby notified that this and all steamers of this line carry general cargo for all ports, including explosives, kerosene oil and products of petroleum, spirits of turpentine, and other flam[illegible]

TED TO CAREFULLY READ THIS BILL OF LADING

tes of Congress relative to the restrictions, fines and penalties imposed on any person or persons ime, Matches, Powder, Turpentine, Nitro-Glycerine, Camphor, Petroleum or its products. Nitric or

SHIPPERS ARE REQUESTED TO CAREFULLY READ THIS BILL OF LADING

☛ NOTICE—The attention of Shippers is called to the Acts of Congress relative to the restrictions, fines and penalties imposed on any person or persons shipping or attempting to ship Oil of Vitrol, Unslacked Lime, Matches, Powder, Turpentine, Nitro-Glycerine, Camphor, Petroleum or its products, Nitric or Chemical Acids, or other articles of like character.

1. The goods to be discharged from the ship as soon as she is ready to unload into lighter, hulk, temporary depot, or lazaretto, if necessary, by the agents of the vessel, at the risk and expense of the owners of the goods.

2. It is hereby expressly agreed that the freight having been prepaid by the shippers, became wholly due, and belonged absolutely to the steamer, without recovery, upon receipt of the goods into the custody of the said steamer, ship lost or not lost; and on the happening of any of the contingencies hereinafter mentioned the said steamship is to have the right to forward the above mentioned packages to the port of destination on its own route, and shall receive extra compensation for such service, whether performed by the vessels of this line or those of strangers; and in case of salvage services rendered to aforesaid merchandise or treasure during the voyage by a vessel of the said line, such salvage services shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

3. It is mutually agreed that the ship shall have liberty to sail without pilots; to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the ordinary course of her voyage, or should the goods or any part of them be shut out from said steamship, that the carrier is authorized to forward or transship the goods to their destination by any other vessel, steam or sail at shipper's risk.

4. It is also mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause or wheresoever occurring; by barratry of the master or crew, by enemies, pirates or robbers, by arrest and restraint of princes, rulers or people; riots, strikes or stoppages of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation, of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the shipowner, not resulting, however, in any case from want of due diligence by the owners of the ship or any of them, or by the ship's husband or manager; by unseaworthinessof the ship, even existing at time of shipment or sailing on the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; nor for heating, effects of climate, heat of hold, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, nor for damage or deterioration caused by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency of, or absence of marks, numbers, addresses or descriptions, nor for risk of craft, hulk or transshipment; nor for any loss or damage caused by the prolongation of the voyage, nor for damage of any kind to articles perishable in their nature; and that the carrier shall not be concluded as to the correctness of statement herein of quantity, quality, weight, contents and value.

5. The freight on the cargo carried hereunder is regulated in consideration of all the terms of this contract and is based partly on the value of the cargo. Unless a higher value shall be declared and written in this bill of lading and freight paid thereon accordingly, the valuation of each package of general cargo shall be taken to be not more than $100, or in case of household goods or personal effects, not more than $5.00 for every 100 pounds, or in the case of bulk cargo, $200 per freight ton; and in case of total loss or short delivery, the shipowner shall not be liable for more than the amounts so indicated respectively, not exceeding the invoice value in any case. Any partial loss or damage for which the shipowner may be liable shall be adjusted pro rata on the amounts above indicated, respectively, or on the invoice value, whichever shall be the least. The shipowner shall not be liable in any event for more than the difference between the damaged value and the value hereinabove agreed. Insofar as the shipowner may be held liable to the owner, shipper, or consignee of the goods, or the holder of this bill of lading, the shipowner shall be entitled to the benefit of any insurance on the goods and to any payments made by or on behalf of the insurers thereof, whether under the guise of advances, loans or in any other manner whatsoever.

6. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

7. Also, that the carrier shall have a lien on the goods for all freight and charges and also for all fines or damage which the ship or cargo may incur or suffer by reason of the incorrect or insufficient marking, numbering and addressing of packages, or description of their contents; or for any duty, tax or impost, of whatever nature, levied upon the steamer, by the authorities at the Port of Discharge, for or in connection with the goods herein described.

8. This cargo is received on the express condition that if it should be impracticable or unsafe in the opinion of the master to land the goods at the port for which they are intended, whether through Custom House not being able to receive it, through weather, earthquake, epidemic, quarantine, riot, war, strike, lockout, labor troubles, disturbances, blockade or interdict, congestion of port, lack of launches or other elements of discharge or for any cause whatsoever which the carrier cannot remedy, the Master is to have the option of discharging all or any part of the goods at any other port which he may consider safe, or of retaining same on board until the steamer's return trip, in which case steamer shall be entitled, for such extra service, to a reasonable compensation over and above the amount of prepaid freight, as per this bill of lading; or of transferring same to hulks, craft or other vessel, steam or sail, to port of destination; or of transshipping same at any other port he or the steamer's agent may think convenient, at risk and expense of the shipper, owner or consignee of the goods; such discharge or transshipment shall be deemed final delivery under this contract, and upon a letter being put into the post office addressed to the shipper, or consignee if named in bill of lading, stating such discharge or transshipment the carrier shall be relieved from all responsibility; this option may be availed of by Master at any time, either before commencing or during process of discharge, and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the carrier shall have the right under any and all other circumstances or at their option, and without notice, to transship the goods, at the carrier's expense, but at the shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam or sail, whether owned or employed by the said line. It is also agreed that the Master or agents of the steamer at the port of destination shall have the option of requiring consignees to furnish lighters to take delivery of the within described merchandise.

9. Also, that the Master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods at the expense and risk of the owners of said goods; and if this in his judgment is inexpedient, the goods to be taken from the ship's tackles where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the Master at the expense of the consignee, and at his risk of fire, loss or injury, as the authorities at the port of discharge shall direct. If by reason of lack of lighters, care or discharging facilities of any nature whatsoever, in the Master's opinion, the vessel is likely to be detained beyond the time required under ordinary circumstances to discharge the within goods, he is at liberty to proceed on his voyage with the whole or any portion of the within goods remaining on board, to be discharged on steamer's return trip subject to the payment of a reasonable compensation in the same manner as provided in clause 8 of this bill of lading, or at the option of the Master to forward them to destination from the first convenient port he may subsequently call at, at the risk and expense of the consignees, and the carrier shall not be responsible for damage or loss as the consequence thereof.

10. Also, that if any bags of grain, flour, coffee, cocoa, or similar cargo be landed slack or torn, the consignee shall accept such proportion of the sweepings as shall be allotted by the agents of the carrier and the same shall be deemed a full settlement of any claim for loss in weight.

11. Also, that the shippers are hereby notified that this and all steamers of this line, carry general cargo for all ports, including explosives, kerosene oil and products of petroleum, spirits of turpentine, and other liquids in cans, cases, barrels or packages, without liability for any damage to other cargo resulting from leakage, smell, evaporation or other action of said goods.

12. General average shall be adjusted and payable according to York-Antwerp Rules of 1890 and Antwerp Rule of 1903, and as to matters not therein provided for, according to the laws and usages at the port of New York, or at shipowner's option, at last port of discharge. The general average in every instance shall be prepared by average adjusters selected by the shipowner, in case of danger, damage or disaster resulting from accident or from faults or errors in navigation or in the management of or from any latent or other defect of the vessel, her machinery or appurtenances, from unseaworthiness, even though existing at the time of shipment or at the beginning of the voyage, if the defect or unseaworthiness was not discoverable by the exercise of due diligence and if the shipowner shall have exercised due diligence to make the vessel seaworthy and properly manned, equipped and supplied with respect to the matters concerned in the aforesaid danger, damage or disaster, then the shippers, consignees or owners of the cargo or the holders of this bill of lading shall nevertheless pay salvage and any special charges incurred in respect of the cargo and shall contribute with the shipowners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure of any common peril, all with the same force and effect and to the same extent as if such accident, danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation or in the management of the vessel or by any latent or other defect or unseaworthiness. The shippers, consignees, owners of the cargo or holders of this bill of lading shall make a deposit in cash or give a satisfactory guaranty, as the shipowner or Master may determine, equivalent to the proportion of such charges that may be estimated by the shipowner or Master to become due from the cargo. Salvage services rendered to the goods by another vessel owned by or in the service of the shipowner shall be paid for as fully as if such vessel were owned by or in the service of strangers.

13. Also, if the steamer entrusts or delivers the aforesaid merchandise or treasure to any other vessel, steam or sail, or agent or other person, for the purposes of being FORWARDED to any port or place other than the regular ports in the customary route of this line, or to any port in said customary route at which the steamer may not call on her present voyage (which the steamer is hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and such agent shall alone be liable; and the steamer shall not be, in any event, responsible for the negligence or non-performance of any such company or person; and the shipper and owner hereby severally agree that all stipulations, exceptions and conditions contained in this bill of lading shall extend to, and inure to the benefit of each and every company or person to whom the carrier may entrust or deliver the above described property for transportation, and shall define and limit the liability therefor of such other company or person.

14. Also, that the carrier shall not be responsible for stains upon packages nor for loss or damage caused by the shrinking of any wooden or other package whether due to climatic influences or otherwise.

15. Also, that full freight is payable on damaged goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

16. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

17. The shipowner shall not be liable for any claims whatsoever unless written notice thereof shall be given to the shipowner before the removal of the goods from the wharf, even though such removal be by customs authorities, or within three days after the vessel shall have finished discharging, if the goods shall not have been removed sooner. Suit to recover for loss and/or damage shall not in any event be maintainable against the shipowner unless instituted within six months after the giving of written notice as above provided or after the vessel shall have finished discharging. No agent nor employee shall have authority to waive any of the provisions or requirements of this bill of lading. Any action by the shipowner or its agents or attorneys in considering or dealing with claims where the provisions or requirements of this bill of lading have not been complied with, shall not be considered a waiver of such requirements and they shall not be considered as waived except by an express waiver.

18. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed, for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them, any other treatment than that given to ordinary non-perishable cargo. The refrigeration, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel and all the exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

19. Also, in case any part of the goods cannot be found for delivery during the steamer's stay at the port of destination, they are to be forwarded by first opportunity, when found, at the carrier's expense, the steamer not to be held liable for any claim for delay or otherwise.

20. Also, that merchandise on wharf awaiting shipments or delivery be at shipper's risk of loss or damage by fire and/or flood, and/or robbery.

21. Also, that in case of quarantine the goods may be discharged into any depot, lazaretto, hulk or other place or vessel as may be required for ship's despatch, or should this be impracticable or inadvisable in the opinion of the Master, the goods may be landed at such port as he may deem most convenient, at the risk and expense of the owners of the goods, or they may be retained on board until steamer's return trip. Quarantine expenses upon the goods, of whatever nature or kind, shall be borne by the owners of the goods whether in the ship's hold, in lighter, hulk, craft or on shore.

22. Also, that when it is necessary to verify weights or measurements in dispute, the expenses of re-weighing or re-measuring shall be paid by the party in error. Double freight will be charged on all goods not correctly described.

23. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property.

24. Cargo for Callao may be delivered to the Custom House or Muelle Darsena, under receipt, which receipt will relieve the carrier from all responsibility. The cargo discharged at Callao shall pay additional freight according to the tariff approved by the Steamship Companies, and that tariff shall be taken as forming an integral part of the Bill of Lading. In all cases the steamship company's responsibility shall cease immediately the goods have left steamer's tackles. All discharging and reshipping expenses on cargo destined for minor ports and which has to be cleared and despatched at a major port, are for the account of and payable by consignee, and must be cleared at the Callao Custom House by the Owner or Agent immediately on the steamer's arrival, otherwise the goods to be landed at Callao for account and risk of consignee; and in such case the receipt of the Muelle Darsena or Certificate of the Resguardo or other port authorities that the goods have been landed, to be accepted by the owners or consignees as a thorough and legal cancelment of this bill of lading.

25. It is also mutually agreed that all questions arising under this Bill of Lading shall be construed according to the laws of the United States of America as administered in the United States and nothing herein contained shall prevent the ship owner from claiming in the United States of America the benefits of the United States Revised Statute Sections 4281 to 4287 and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act relating to Navigation of Vessels, &c." Provided, that in all cases where merchandise or property is transported under this contract from or between the Ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken against the company or vessel carrying the goods in the United States of America, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipments shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in this Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as struck out and expunged.

(CONTINUED OVER PAGE)

Stipulation of

(continued from overpage)

58. The Shipper, Vessel, Consignee, Destination and Goods referred to overpage as mentioned or described on this side (reversed) hereof are as follows:

SHIPPER J.H. SENIOR, AGENT. PER S.S. "TOLUMA" (NORW.)

EXPECTED TO SAIL NOVEMBER 17th, 1926 DESTINATION BAHIA BLANCA, ARGENTINE.

CONSIGNED ORDER OF NESS. INDIA OIL CO.

NOTIFY

DESCRIPTION OF GOODS

Marks	Numbers	Quantities	SHIPPER'S DESCRIPTION OF CLASS AND CONTENTS OF PACKAGES	GROSS LBS.	Gross Kilos
STANDARD		10000	CASES PETROLEUM REFINED OIL.	652500	
		43000	CASES NAPHTHA	3418500	1100000/0
		2000	CASES NAPHTHA	154000	
		55000		4425000	

55000 @ 27¢ Case 14850 00

Storage 4 00

$ 14854 00

Bill of Lading Submitted With Stipulation of Agreed Facts (Continued).

STANDARD	10000	CASES PETROLEUM NAPHTHA Gls. 420000		
	43000	CASES NAPHTHA	3414500	110000/0
	2000	CASES NAPHTHA	154000	
	55000		4425000	
	55000 CS	27 ¢ Case		14850 00
		Stamp Tax		4 00
				$ 14854 00

COMPTROLLER'S CHECKED

$

FREIGHT TO BE PREPAID

AND FINALLY, in accepting this bill of lading, the shipper, owner and consignee of the goods and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder, and it is hereby mutually stipulated and agreed that this bill of lading shall have the effect of a special contract.

IN WITNESS WHEREOF, the Master or Agent of the said ship hath affirmed to 3 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at NEW YORK, this 16 th day of NOVEMBER 193 8

GRACE LINE, Inc.

ACCEPTED Richard W. Muller
For the Shippers.

By.....

[fol. 54] GENERAL AVERAGE BOND SUBMITTED WITH STIPULATION OF AGREED FACTS

(Omitted pursuant to stipulation.)

GENERAL AVERAGE STATEMENT SUBMITTED WITH STIPULATION OF AGREED FACTS

Johnson & Higgins, Average Adjusters,
67 Wall St., N. Y.

Average Agreement

Agreement made as of the twenty-first day of January, 1929, between Akties "Cuzco," owners of the S/S "Toluma," parties of the first part, and the several parties, subscribers hereto, parties of the second part, witnesseth:

Whereas, it is alleged that said vessel, laden with cargo, sailed from New York and Norfolk during November, 1928, for Bahia Blanca-Puerto Madyrn-Magallanes-Corral, and that in the prosecution of her voyage, on November 22nd, 1928, she was in collision with S/S "Sucarseco," as a result of which she sustained damage and put back to Norfolk for survey and repairs, and

Whereas, by reason of occurrences on the voyage, certain losses and expenses were, and other losses and expenses may be, incurred, which may constitute a charge by way of general average, or otherwise, upon said vessel, her earnings, and her cargo, or which may apply to and be due from specific interests:

[fol. 55] Now therefore we, the subscribers, being or representing owners, shippers or consignees of such of the cargo of said vessel as is severally described and set opposite our respective signatures hereto, in consideration of the premises and of the delivery of such cargo as may be saved, do hereby, for ourselves and our principals and executors and administrators, severally and respectively, but not jointly, nor one for the other, covenant and agree to and with the owners of said vessel for themselves and for all interests concerned in the venture aforesaid, and one with the other, that so much of the losses and expenses aforesaid as upon an adjustment of the same to be stated

by Johnson & Higgins, Average Adjusters, according to the provisions of the contract of affreightment and to the laws and usages applicable, may be shown by the statement to be a charge upon said cargo, or to be due from us, shall be paid by us respectively, according to our ratable proportion thereof, to the owners of said vessel, or Johnson & Higgins, in and for settlement in accordance with said statement.

Should the value of the services rendered to said cargo be determined by settlement or arbitration, we do hereby severally covenant and agree to pay each our ratable proportion of any sum thus fixed; and in the event of suit being brought to recover for such services, we do hereby severally covenant and agree to give bond for our respective interests in the same manner as if the salvors had required such bond direct from us before surrendering the cargo, and to pay and satisfy fully our ratable proportion of any final judgment rendered therein.

[fol. 56] We do hereby severally authorize and direct our respective insurers and all other persons and corporations, who or which guarantee the payment of any general average and/or salvage and/or special charges and/or any amounts that may become due from us under this agreement, to pay for and in our behalf unto the owners of said vessel, or Johnson & Higgins, for the purposes aforesaid, the amounts shown by said statement to be due from us respectively.

We do hereby severally promise and agree to furnish promptly, on request of said adjusters, all such information and documents as they may require to prepare said statement, and in the event of inability or failure to do so in respect to any shipment or shipments, said adjusters are authorized to prepare said statement on such information as they can by reasonable diligence obtain, and such statement shall be binding as respects the information so acted upon; but if, thereafter, proper informaton and documents are furnished the adjusters and request is made that such statement be amended, it shall be amended, provided the party making the request pays the expenses of preparing, and collecting under the amendment, but the vessel owners, adjusters and trustees shall be under no responsibility in respect of any payment or distribution to or settlement with any other interest, which may have been previously made under the original statement.

This agreement may be executed in several parts, which shall constitute one agreement, by the parties of the second part, and, upon such execution, and the release of said cargo by the parties of the first part, shall have full force and effect.

[fol. 57] In witness whereof, we have executed these presents in the City of Bahia Blanca as of the day and year first above written.

Signatures: p. p. de Angel Grandes; H. Sanches.

Description, viz.—Marks and Numbers; No. Packages; Goods; B/L No.: New York for Bahia Blanca; A G 1/38; Bahia Blanca; Made in U. S. A.; Stow away from boilers in cool place; Mdse.; 38 CS. storage batteries.

Form approved by the Board of Underwriters of New York.

This Agreement must be signed by a member of the firm or an officer of the Company or some party having "power of attorney" and if signed by an officer or attorney it must be so designated hereon.

GENERAL AVERAGE GUARANTY SUBMITTED WITH STIPULATION OF AGREED FACTS

Int. 4

New York, 11/30/28.

Messrs. Johnson & Higgins, New York:

In consideration of the delivery from the S/S "Toluma" of the following goods, viz: 38 cs. storage batteries, Bahia Blanca, shipped by Bond Electric Corp., formerly Yale Electric Corp., without the requirement of a deposit, we [fol. 58] hereby guarantee the payment of all General Average, Salvage and/or Special Charges for which said goods are liable.

Providence Washington Insurance Co., Wm. H. McGee & Co., Inc., Marine Agents, C. E. Burkton, Sec.

In United States District Court, Southern District of New York

#319

A101-148

Aktieselskabet Cuzo, Owner of the Steamship "Toluma", Libellant,

against

Steamship "Sucarseco", Her Engines, Boilers, etc., and Submarine Boat Corporation, Claimants

Submabine Boat Corporation, as Owner, Transmarine Corporation, as Charterer, of the S. S. "Sucarseco", Cross-Libellants

against

S. S. "Toluma", Her Engines, etc., Aktieselskabet Cuzco, as Owner, and Grace Line, Inc., as Charterer, Cross-Respondents

[fol. 59] West India Oil Company, J. H. Senior, Agent, American Insurance Company et al., Libellants,

against

Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, Respondents

(Consolidated Cause)

Kirlin, Campbell, Hickox, Keating & McGrann (W. H. McGrann, of Counsel), for libellant, Aktieselskabet Cuzco, and Steamship "Toluma".

Bigham, Englar, Jones & Houston (D. Roger Englar and Leonard J. Matteson, of Counsel), for libellants West India Oil Company et al.

White & Case and Single & Single (Alonzo L. Tyler, of Counsel), for S. S. "Sucarseco", Submarine Boat Corporation and its receivers.

Opinion

Patterson, D. J.:

There was a collision at sea between the "Toluma" and the "Sucarseco". The collision was due to the fault in

navigation of the two vessels equally. Both were damaged, the "Toluma" so badly that the master determined to run to a port of refuge for repairs. Part of the cargo was unloaded, repairs made and the cargo reloaded, after which the voyage was resumed. The repairs and incident expenses involved a large sum of money and were paid by the owner of the "Toluma".

The bills of lading governing the carriage of the "Toluma's" cargo contained the customary Jason clause, to the [fol. 60] effect that in case of danger or disaster resulting from fault in navigation (the shipowner having exercised due diligence to make the ship seaworthy), the owners of cargo should contribute with the shipowner in general average to the payment of sacrifices, losses or expenses of a general average nature incurred for the common benefit, to the same extent as if the danger or disaster had not arisen out of fault in navigation. Accordingly, on arrival at destination the cargo was subject to a lien for general average expenses and losses. A general average statement was made, apportioning the expenses and losses between the shipowner and cargo owners, and under this statement the sum of $39,394.01 was charged against the cargo owners. Most of these parties have paid in their contributions. The only physical damage to cargo resulting from the collision was breakage due to handling in the course of repairing the ship, the amount of such damage being $2,956.89, which sum was allowed to cargo in the general average.

Three suits were brought in this court and were ordered consolidated for trial. The first is by the owner of the "Toluma" against the "Sucarseco". The damages demanded include the full amount paid for repairs to the vessel, no deduction being made for the sums assessed against and collected from cargo owners in general average. The second is a cross-libel by the owner of the "Sucarseco" against the "Toluma" for damages sustained by the "Sucarseco". The third is by owners of cargo on the "Toluma" against the owner of the "Sucarseco", to recover the amounts paid by them as general average contributions. The facts referrred to above have been stipulated as true.

[fol. 61] The question is whether in a collision case where both vessels were at fault, the cargo owner may recover from the non-carrying vessel not merely the physical damage suffered by cargo but also the amount which he has paid as contribution in general average to the carrying

vessel, liability for such contribution having resulted from the presence of the "Jason Clause" in the contract of affreightment.

It is settled that between two vessels equally at fault in a collision the damages will be divided in equal amounts. The North Star, 106 U. S. 17. It is also clear that for physical damage done to cargo the cargo owner may recover in full from the non-carrying vessel, The Atlas, 93 U. S. 302, and this notwithstanding that as between the cargo owner and the carrier the latter, though at fault in the collision, is not liable because of the Harter Act. One-half of the amount so paid by the non-carrier to the cargo owner will be charged against the carrier in settling the controversy between them, thus indirectly making the carrier liable up to one-half the damage to cargo. The Chattahoochee, 173 U. S. 540. It is therefore clear in this case that those whose goods were damaged to the amount of $2,956.89 through breakage while the "Toluma" was being repaired may recover the full amount directly from the "Sucarseco", and the latter may pass on the "Toluma" one-half of this amount.

Now as to the right of the cargo owner to recover from the non-carrying vessel what he has paid by way of general average. The liability of a cargo owner to contribute in general average toward sacrifices or losses suffered by the shipowner is comparable to the liability of an insurer of [fol. 62] maritime risks. Where the damage to hull is caused solely by the fault of a stranger, the primary liability to make the loss good is on the stranger, and the liability of the cargo owner to the ship owner in general average is no more than secondary. These views were set forth in Pool Shipping Co. v. United States, 33 Fed. 2nd 275, 277, a collision case where the Circuit Court of Appeals of this Circuit held that the owner of the innocent vessel might recover full damages from the owner of the vessel at fault, although part of the damages had already been collected by the former from owners of cargo under general average. The court added that recovery to the extent of any amount already contributed by the cargo owner would be for the latter's account.

Where a collision is brought about by negligent navigation of both vessels, there is no obligation on the cargo owner to contribute in general average to the sacrifices or

losses of the carrier, in the absence of an express agreement to make contribution. The Irrawaddy, 171 U. S. 187; The Jason 225 U. S. 32. With such an agreement, there is a liability on the cargo owner to contribute in general average, but that liability is still secondary. The primary responsibility is upon the other vessel for its proportionate share of the injury. If the cargo owner has made good to the carrier part of the loss incurred, the carrier on later recovery against the other vessel must account to the cargo owner for a proportionate amount when the damages have thus been diminished. See Ralli v. Societa Anonima, 222 Fed. 994.

From these views it must follow that the cargo owner whose goods have not been injured but who has paid contribution in general average toward making good the loss [fol. 63] suffered by his carrier in a collision with another vessel in which both vessels were guilty of negligent navigation has no direct right of action against the other vessel. His only basis of recovery against the other vessel is by subrogation to the right of the carrier.

It is argued that The Energia, 66 Fed. 604, is opposed to this result. There the carrying vessel was solely at fault and it was held that cargo owners who had contributed in general average might recover back what had been exacted from them. The case did not involve any of the questions presented here.

There is another aspect of the case that in my opinion suffices to defeat any direct recovery by the cargo owners against the "Sucarseco" for what they have paid in general average. As already pointed out, the law at large imposed no burden on them to contribute in general average, because the carrier was negligent. That burden fell upon them because of their agreement with the carrier that under the conditions which later developed they would contribute to make good losses of a general average nature even though caused by the carrier's negligence. Their loss arose only because of their contract with the carrier. The fact that the "Sucarseco" injured the "Toluma" does not make it liable to persons who incurred losses because of contracts with the owner of the "Toluma" that were rendered burdensome because of the injury. In the eye of the law such damages are too remote. Robins v. Flint,

275 U. S. 303; The Federal No. 2, 21 Fed. 2nd 313; Insurance Co. v. Brame, 95 U. S. 754.

The result is that the cargo owners are entitled to recover from the "Sucarseco" the physical damage done to [fol. 64] cargo; the "Toluma" is entitled to recover from the "Sucarseco" one-half the amount by which its damages exceeded those of the "Sucarseco," the damages to the former to include items for which it was reimbursed in general average, and the damages to the latter to include the amount which it must pay to the cargo owners; and the cargo owners will be entitled to recover from the "Toluma" their proportionate part of one-half the damages allowed to the "Toluma" of a general average character. In case of disagreement as to the computations the matter will be sent to a commissioner.

(Sgd.) Robert P. Patterson, U. S. D. J.

June 23, 1933.

[fol. 65] In United States District Court

Aktieselskabet Cuzco, Owner of the Steamship "Toluma," Libelant,

against

Steamship "Sucarseco," Her Engines, Boilers, etc., Submarine Boat Corporation, Claimant

(and two other cases)

Present: Honorable Robert P. Patterson, District Judge.

Final Decree—Feb. 23, 1934

This consolidated cause having been submitted to this Court for determination and decree upon all the pleadings and stipulations in the several libels and the cross-libel, and upon a stipulation of agreed facts dated February 23, 1933, and the documents referred to therein, and briefs having been submitted by advocates for the respective parties, and due deliberation having been had thereon, and the Court having rendered its decision in writing and its findings of fact and conclusions of law, dated June 23, 1933, determining the rights of the parties according to the [fol. 66] agreement contained in the stipulation of agreed facts that the collision was due to fault in navigation on the

part of the steamship "Toluma" and the steamship "Sucarseco," equally, holding (1) that the cargo owners, West India Oil Company, et al., are entitled to recover from the "Sucarseco" the physical damages sustained by cargo as a result of the collision; and, (2) that Aktieselskabet Cuzco is entitled to recover from the "Sucarseco" one-half the amount by which its damages exceeded those of the "Sucarseco," the damages of the "Toluma" to include items for which it was reimbursed in part by cargo in general average, and the damages of the "Sucarseco" to include the amount which it must pay hereunder to cargo owners [on account of the physical damages sustained by cargo]; and, (3) holding that the cargo owners are not entitled to recover from the "Sucarseco" their damages consisting of their contributions to general average losses and expenses, but are entitled to recover from the "Toluma" their proportionate share of one-half the damages allowed to the "Toluma" of a general average character; and it appearing from the stipulation of facts that the cargo libelants who suffered physical damage (damage by handling) due to the collision are West India Oil Company in the sum of $2,051.83 and The Texas Company in the sum of $905.08, and that interest on said claims from February 23, 1933, to the date thereof amounts to the sums of $122.43 and $54.01, respectively, and it appearing from the stipulation of facts that the "Toluma's" damages, including those items for which it was reimbursed in general average amount to the total sum of $80,790.83, with interest thereon from Feb- [fol. 67] ruary 23, 1933, to the date of entry of this decree, computed in the sum of $4,820.89, amounting in all to the sum of $85,611.72, and that the said sum includes items for which the "Toluma" was reimbursed in general average, amounting to the sum of $40,322.95, and that the libelant cargo owners' proportionate share of one-half thereof, based on their general average contributions, amounts to $16,924.58, which, with interest thereon from February 23, 1933, to the date hereof, computed in the sum of $1,009.82, amounts to the sum of $17,934.40, and it further appearing from the stipulation of facts that the damages sustained by the Submarine Boat Corporation, as owner of the "Sucarseco," amount to the sum of $14,889.46, with interest thereon from February 23, 1933, to the date hereof, computed in the sum of $888.47, amounting in all to the sum of $15,777.93;

Now, on motion of Kirlin, Campbell, Hickox, Keating & McGrann, it is

Ordered, adjudged and decreed that the libelant, West India Oil Company, recover the sum of $2,051.83, plus interest in the sum of $122.43, making a total sum of $2,174.26, and that The Texas Company recover the sum of $905.08, plus interest in the sum of $54.01, making the total sum of $959.09, being the amount of the physical damage (damage by handling) sustained by their respective interests in cargo on board the steamship "Toluma," of and from the steamship "Sucarseco," her engines, etc., and/or the claimant and/or receivers and/or stipulators; and, it is further

Ordered, adjudged and decreed that the libelant, Aktieselskabet Cuzco, as owner of the steamship "Toluma," do [fol. 68] recover of and from the steamship "Sucarseco," her engines, etc., and/or the claimant and/or stipulators for value, one-half the difference between the damages sustained by the steamship "Toluma," with interest, amounting to the total sum of $85,611.72, and the damages sustained by the steamship "Sucarseco," with interest, including the amount which the latter must pay hereunder to West India Oil Company et al., amounting to the sum of $18,911.38, which said one-half the difference amounts to the sum of $33,350.17, and that of and from said sum the following named cargo libelants do recover of and from the S. S. "Toluma" and the libelant, Aktieselskabet Cuzco, the sum of $17,934.40, the same being cargo owners' proportionate share of one-half the damages allowed to the "Toluma" of a general average character, with interest, and that the same be recovered by and paid to the following named cargo libelants in amounts proportionate to their respective contributions in general average as hereinafter set after their names, as follows:

	Proportion of G/A items allowed to "Toluma"	Interest	Total
West India Oil Company	$1,854.41	$110.65	$1,965.06
Home Insurance Company	109.50	6.51	116.01
Providence Washington Insurance Company	146.77	8.76	155.53
Atlantic Mutual Insurance Co	104.75	6.25	111.00
Norwich Union Fire Insurance Society, Ltd	115.15	6.87	122.02
Federal Insurance Company	109.97	6.56	116.53
Thames & Mersey Marine Insurance Co., Ltd	23.31	1.39	24.70

[fol. 69]

	Proportion of G/A items allowed to "Toluma"	Interest	Total
Eagle Star & British Dominions Insurance Co	1,182.88	70.58	1,253.46
Royal Insurance Company, Ltd	42.43	2.53	44.96
British & Foreign Marine Insurance Co., Ltd	413.88	24.69	438.57
Great American Insurance Co	665.38	39.70	705.08
United States Fire Insurance Company	881.30	52.59	933.89
Universal Insurance Co	809.85	48.32	858.17
Globe & Rutgers Fire Insurance Co	551.66	32.92	584.58
Connecticut Fire Insurance Company	386.87	23.08	409.95
Fireman's Fund Insurance Company	358.25	21.37	379.62
Union Insurance Society of Canton, Ltd	7.13	.42	7.55
Continental Insurance Co	36.69	2.19	38.88
Standard Marine Insurance Company, Ltd	7,678.46	458.18	8,136.64
Sea Insurance Company, Ltd	22.22	1.32	23.54
Fidelity-Phenix Fire Insurance Co	431.74	25.76	457.50
Automobile Insurance Company of Hartford	32.20	1.92	34.12
United States Merchants & Shippers Insurance Co	116.23	6.93	123.16
Insurance Company of North America	227.86	13.60	241.46
Phoenix Insurance Company	46.18	2.75	48.93
Union Marine Insurance Company	55.98	3.34	59.32
American Insurance Co	22.60	1.35	23.95
The Texas Company	430.19	25.67	455.86
L. L. Jacbos	60.74	3.62	64.36
Totals	$16,924.58	$1,009.82	$17,934.40

[fol. 70] and it is further

Ordered that unless this decree be satisfied or an appeal be taken therefrom within ten (10) days after service of a copy hereof on the proctors for the steamship "Sucarseco" Submarine Boat Corporation, West India Oil Company et al., and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, execution may issue against the steamship "Sucarseco," Submarine Boat Corporation, West India Oil Company et al., and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, and their stipulators, to obtain satisfaction of this decree.

Robert P. Patterson, U. S. D. J.

Further notice of settlement waived.

Single, Atkins & Tyler, Counsel for S. S. "Sucarseco."

Bigham, Englar, Jones & Houston, Counsel for West India Oil Company et al.

[fol. 71] In United States District Court, Southern District of New York

Aktieselskabet Cuzco, Owner of the Steamship "Toluma," Libellant,

against

Steamship "Sucarseco," Her Engines, Boilers, etc., Submarine Boat Corporation, Claimant

(and Two Other Cases)

Notice of Appeal and Allowance of Appeal

Sirs:

Please take notice that the libellants, West India Oil Company and J. H. Senior, Agent, American Insurance Company, Atlantic Mutual Insurance Company, Automobile Insurance Company, British & Foreign Marine Insurance Company, Connecticut Fire Insurance Company, Continental Insurance Company, Eagle Star & British Dominions Insurance Company, Federal Insurance Company, Fidelity Phenix Insurance Company, Fireman's Fund Insurance Company, Globe & Rutgers Fire Insurance Company, Great American Insurance Company, Home Insurance Company, Insurance Company of North America, Norwich Union Fire Insurance Company, Phoenix Insurance Company, Providence-Washington Insurance Company, Royal Insurance Company, Sea Insurance Company, Standard Marine Insurance Company, Thames & Mersey Marine Insurance Company, Union Insurance Society of Canton, Ltd., Union Marine Insurance Company, Universal [fol. 72] Insurance Company, United States Fire Insurance Company, United States Merchants & Shippers Insurance Company, The Texas Company and L. L. Jacobs, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above entitled consolidated cause on the 23rd day of February, 1934, in so far as the same fails to allow to said libellants recovery of the full amount of their damages as claimed, of and from the steamship "Sucarseco," and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Cor-

poration, and in so far as the same allows libellant Aktieselskabet Cuzco to recover as damages sums for which it was reimbursed by cargo contributions in general average and which the above named cargo libellants claim as damages recoverable from the steamship "Sucarseco" and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation.

Dated New York, February 26, 1934.

Yours, etc., Bigham, Englar, Jones & Houston, Proctors for Appellants, West India Oil Company, et al.

To:

Charles Weiser, Esq., Clerk, U. S. District Court for the Southern District of New York.

[fol. 73] Messrs. Single, Atkins & Tyler, Proctors for S. S. "Sucarseco" and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, 116 John Street, New York, N. Y.

Messrs. Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for Aktieselskabet Cuzco, 27 William Street, New York, N. Y.

London & Lancaster Indemnity Company of America.

The foregoing appeal is hereby allowed.

Dated New York, February 26, 1934.

Jno. C. Knox, U. S. D. J.

[fol. 74] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

AKTIESELSKABET CUZCO, Owner of the Steamship "TOLUMA," Libellant,

against

Steamship "SUCARSECO," Her Engines, Boilers, etc., SUBMARINE BOAT CORPORATION, Claimant

(and Two Other Cases)

ASSIGNMENT OF ERRORS

The libellants, West India Oil Company and J. H. Senior, Agent, American Insurance Company, Atlantic Mutual Insurance Company, Automobile Insurance Company, British

& Foreign Marine Insurance Company, Connecticut Fire Insurance Company, Continental Insurance Company, Eagle Star & British Dominions Insurance Company, Federal Insurance Company, Fidelity Phenix Insurance Company, Fireman's Fund Insurance Company, Globe & Rutgers Fire Insurance Company, Great American Insurance Company, Home Insurance Company, Insurance Company of North America, Norwich Union Fire Insurance Company, Phoenix Insurance Company, Providence-Washington Insurance Company, Royal Insurance Company, Sea Insurance Company, Standard Marine Insurance Company, Thames & Mersey Marine Insurance Company, Union Insurance Society of Canton, Ltd., Union Marine Insurance Company, Universal Insurance Company, United [fol. 75] States Fire Insurance Company, United States Merchants & Shippers Insurance Company, The Texas Company and L. L. Jacobs, hereby assign error in the opinion, findings and decree of the District Court, as follows:

1. In that the court failed to award to the libellants recovery of their damages in full as claimed, of and from the steamship "Sucarseco" and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation, respondents, and allowed libellant Aktieselskabet Cuzco to recover, as damages, sums for which it was reimbursed by cargo contributions in general average which were claimed by the above-named libellants as cargo damages recoverable directly from the steamship "Sucarseco" and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation.

2. In that the Court declined to hold that contributions by cargo interests in general average to losses and expenses incurred by the master for the purpose of minimizing damages, constitute cargo damage resulting from the collision recoverable from the colliding vessel in the same manner as physical damage.

3. In that the Court held that the liability of cargo for contribution in general average resulted from the presence of the Jason Clause in the contract of affreightment.

4. In that the Court held that the liability of a cargo owner to contribute in general average towards sacrifices

[fol. 76] or losses suffered by a shipowner is comparable to the liability of an insurer of maritime risks.

5. In that the District Court proceeded on the assumption that contributions by cargo in general average are contributions towards sacrifices or losses suffered by the shipowner, including damage to hull.

6. In that the Court held that where the damage to hull is caused solely by the fault of a stranger, the primary liability to make the loss good is on the stranger and the liability of a cargo owner to the shipowner in general average is no more than secondary.

7. In that the Court held that where a collision is brought about through negligent navigation of both vessels there is no obligation on the cargo owner to contribute in general average to sacrifices or losses of the carrier in the absence of an express agreement to make contribution.

8. In that the Court held that when a Jason Clause is included in the bill of lading there is a liability on the cargo owner to contribute in general average, but that that liability is still secondary and that the primary responsibility is upon the other vessel for its proportionate share of the injury.

9. In that the Court held that the cargo owner whose goods have not been injured but who has paid contribution in general average toward making good the loss suffered [fol. 77] by his carrier in a collision with another vessel, in which both vessels were guilty of negligent navigation, has no direct right of action against the other vessel and that his only basis of recovery against the other vessel is by subrogation to the right of the carrier.

10. In that the Court held that the loss of the cargo owners resulting from contributions in general average arose only because of their contract with the carrier.

11. In that the court held that the fact that the "Sucarseco" injured the "Toluma" does not make her liable to persons who incurred losses because of contracts with the owner of the "Toluma" that were rendered burdensome because of the injury, and that for this reason cargo owners may not be permitted to recover the amount of such

losses from the "Sucarseco" and owners because such damages are too remote.

12. In that although the court held that the cargo owners on payment of general average contributions are subrogated to the rights of the carrier, it failed to allow the cargo owners to recover directly from the steamship "Sucarseco" and Henry R. Sutphen and Irving Trust Company, Receivers for Submarine Boat Corporation and Transmarine Corporation to the extent of their subrogated rights.

Dated New York, February 26, 1934.

Bigham, Englar, Jones & Houston, Proctors for West India Oil Company, et al., Libellants.

[fol. 78] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

A101-148

[Title omitted]

(And Two Other Cases)

(Consolidated Cause)

STIPULATION AS TO CONTENTS OF RECORD

It is hereby stipulated and agreed by and between the proctors for the respective parties herein that the general average statement of Johnson & Higgins, average adjusters, dated New York, September 24, 1929, submitted with the stipulation of agreed facts need not be printed in the transcript of record but may be handed up on the argument of this appeal with the same force and effect as though incorporated herein.

Dated New York, N. Y., March 17th, 1934.

Bigham, Englar, Jones & Houston, Proctors for Appellants, West India Oil Company et al.

Single, Atkins & Tyler, Proctors for S. S. "Sucarseco" and Receivers for Submarine Boat Corporation et al.

Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for Aktieselskabet Cuzco.

[fol. 79] In United States District Court, Southern District of New York

A101-148

[Title omitted]

(And Two Other Cases)

(Consolidated Cause)

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed upon by the parties.

Dated New York, March 17th, 1934.

Bigham, Englar, Jones & Houston, Proctors for Appellants, West India Oil Company et al.

Single, Atkins & Tyler, Proctors for S. S. "Sucarseco" and Receivers for Submarine Boat Corporation et al.

Kirlin, Campbell, Hickox, Keating & McGrann, Proctors for Aktieselskabet Cuzco.

[fol. 80] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 81] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1933

No. 431

Argued May 8, 1934. Decided Aug. 7, 1934

AKTIESELSKABET CUZCO, as Owner of the Norwegian Steamship The Toluma, Libelant,

v.

The Steamship SUCARSECO, Her Engines, Boilers, etc., SUBMARINE BOAT CORPORATION, Claimant (and two other cases),

(Consolidated Cause)

WEST INDIA OIL COMPANY and J. H. SENIOR, Agent, American Insurance Company, et al., Appellants

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Swan, and Chase, Circuit Judges

Appeal from a decree in admiralty of the District Court for the Southern District of New York. Modified.

Kirlin, Campbell, Hickox, Keating & McGrann, of New York City (W. H. McGrann, of New York City, of counsel), for libelant-appellee Aktieselskabet and The Toluma.

Bigham, Englar, Jones & Houston, of New York City (D. Roger Englar and Leonard J. Matteson, both of New York City, of counsel), for libelants-appellants West India Oil Co. and J. H. Senior, Agent, American Insurance Co., and others.

CHASE, Circuit Judge:

During the night of November 22, 1926, the Norwegian steamship Toluma, bound from New York with a general cargo for South American ports, was in collision at sea off the Chesapeake Capes with the American steamship Sucarseco, also bound from New York with a general cargo but for Pacific Coast ports via the Panama Canal. Both ships were damaged. The Sucarseco proceeded on her voy-

age, but the Toluma was so injured that her master, prudently to save further loss to ship and cargo, put into Norfolk, Va., for repairs. There the cargo of the Toluma had to be in part discharged to permit the necessary repairs to the ship to be made. After such repairs were made, the discharged portion of the cargo was reloaded and the Toluma then completed her voyage and delivered her cargo.

Three suits in admiralty were brought in the Southern district of New York as a result of the collision and its attendant consequences. A libel was filed by Aktieselskabet Cuzco, owner of the Toluma, against the Sucarseco to recover the damages sustained by that ship. A cross-libel was filed by Submarine Boat Corporation, as owner, and Transmarine Corporation, as charterer in possession of the Sucarseco, against the Toluma, Aktieselskabet Cuzco, her owner, and Grace Line, Inc., her charterer, to recover for the damage to the Sucarseco. And a libel was filed by West India Oil Company et al., as the owners, shippers, and [fol. 82] underwriters of cargo on the Toluma, against the receivers of the owner and of the charterer of the Sucarseco to recover their damages, including contributions by cargo in general average.

These suits were all ordered consolidated and were heard together in the District Court on a "Stipulation of Agreed Facts." From the decree entered, the cargo interests, alone have appealed, and the sole question presented is whether there was error in not allowing cargo on the Toluma to recover from the Sucarseco contributions made by cargo in general average.

It is agreed by all parties that both ships were seaworthy and that the collision was caused by faulty navigation for which both were equally at fault. No question involving the correctness of the general average adjustment is before us.

The bills of lading, under which all the Toluma's cargo now interested was carried, contained the so-called Jason clause, and the cargo has made the contributions, required under that clause, in accordance with the general average statement.

Cargo was permitted to recover below only for physical damage sustained. This limited recovery to the damage caused by extra handling, as there was no actual harm done the cargo at the time of collision. Recovery of the general

average contributions was denied on the ground that the rights of an owner of cargo against a ship at fault for a collision with the carrying vessel are derivative only, and on the additional ground that an obligation to contribute in general average under the Jason clause rests wholly on a special contract to which the noncarrying vessel is not a party, and that such damage is too remote to be recoverable.

The precise issue before us on this appeal seems not to have been squarely raised before, though we are given to understand that it has often been mooted and avoided by compromise. However, the principles which must govern the decision are well established. This court decided, before the Harter Act (46 U. S. C. A. §§ 190-195) was passed, that a cargo owner might recover from the carrying ship which was solely at fault for a collision contributions made in general average, and this on the ground that they were a part of the cargo damage. The Energia (C. C. A.) 66 F. 604. The effect of that decision, which is of present importance, is that, in a suit by cargo for collision damages, no distinction purely as an element of damage is to be made broadly between physical cargo damage and damages sustained by cargo by reason of general average contributions. The two stand, generally speaking, on the same footing. This was recognized in Ralli et al. v. Societa Anonima di Navigazione, etc. (D. C.) 222 F. 994; Erie & Western Transp. Co. v. City of Chicago (C. C. A.) 178 F. 42, and Gray's Harbor Tugboat Co. v. Petersen (C. C. A.) 250 F. 956. The same rule obtains in England. The Minnetonka (1905) Prob. Div. 206.

Furthermore, cargo is not at fault for a collision in which the carrying ship is involved with another, and may recover its provable damage from the noncarrying vessel when the fault of that ship is a contributing cause. The New York, 175 U. S. 187, 20 S. Ct. 67, 44 L. Ed. 126; The Atlas, 93 U. S. 302, 23 L. Ed. 863.

When both ships in collision are at fault and cargo has recovered from the noncarrying vessel, the owners of that ship may recover from the carrying vessel one-half of the cargo damages on a division of the total damage for the purpose of determining ultimate recovery as between the two ships. And when the balance between the ships has been struck, there is a single recovery from the other ship

by the ship which has proved the greater loss. The North Star, 106 U. S. 17, 1 S. Ct. 41, 27 L. Ed. 91. Nor is this method of computing the damages and obtaining the balance for a single recovery done away with by the provisions of the Harter Act. The Chattahooche, 173 U. S. 540, 19 S. Ct. 491, 43 L. Ed. 801.

Were it possible to apply these principles without taking other factors into account, the right of recovery of the general average contributions here made would be plain. Because of the comparatively small amount of damage sustained by the Sucarseco, that ship and those interested in her have no financial interest in the outcome of this appeal anyway, and, as it happens, the Toluma is making the real defense of the Sucarseco in the action by Toluma's cargo, for Toluma will be adversely affected by a recovery by her cargo from Sucarseco which will increase the Sucarseco's claim in the division of collision damages between the two ships.

It is claimed that these general average contributions cannot be recovered in full from Sucarseco because the right to recover in any event is derivative and at best limited to the proper proportion of the Toluma's recovery from Sucarseco. This contention is based on theories of the nature of [fol. 83] general average and the import of certain decisions which we believe untenable.

Since it is agreed that all of the contributions were of a general average nature in settlement of expenses properly includable in the average adjustment, we need not now pay further attention to that phase of the matter. In making the expenditures, the master of the Toluma acted as the agent of all concerned in the venture. Ralli v. Troop, 157 U. S. 386, 15 S. Ct. 657, 39 L. Ed. 742. As the representative of the shipowner, the master was under no duty to sacrifice any of the shipowner's property to save cargo. The Jason, 225 U. S. 32, 32 S. Ct. 560, 56 L. Ed. —9. Sacrifices made after the safety of the venture has been imperiled and made to save as much as possible from the threatened danger of loss and to save that for the benefit of all is the basis of a general average of the sacrifice among all concerned. That makes the expenses which the master incurs as the agent of the cargo a primary charge on all the cargo interests whose property is rescued from the danger, and it is payable when the property rescued is

taken to its destination. The master alone can bind the cargo to the payment of such expenses, and when he does that he acts as the agent of cargo. So such expenses, when occasioned by the fault of a stranger, are incurred by cargo not as present commitments in fulfillment of a liability secondary to the stranger's to share the loss sustained by the ship, but as sacrifices made to make it possible to complete the voyage and avert greater loss. Consequently, there can be no distinction in respect to general average contributions by cargo being recoverable as damages by cargo in its own right between a situation where a collision between ships is due to the sole fault of the carrying ship and one where both ships are at fault and the decision in The Energia, supra, which puts such damage on the same plane with physical damage is applicable in principle to this case. While before the Harter Act errors in navigation on the part of the carrying ship gave rise to an action by cargo against that ship to recover its damage including general average contributions, the statute, since the Toluma fulfilled the prescribed conditions for the excuse, excused that ship from liability to cargo though it left the liability of the noncarrier untouched. The idea that the liability of the noncarrying ship, when at fault for a collision, to cargo on the carrying ship, is secondary, may be due in part at least to some reference to the position of cargo as that of a surety or insurer in Pool Shipping Company v. United States (C. C. A.) 33 F. (2d) 275, where the right of the carrying ship to recover as bailee of the cargo was sustained, but that language is not to be torn from its context and given general application. Nor is there anything contrary to our conclusion here in Ralli v. Societa Anonima, etc., supra, where the carrying vessel jointly at fault for the collision had been credited with one-half of the general average contributions in the division of damages between the ships and was required to account to its cargo for this credit.

But even so it is said that the Sucarseco is not lawfully to be required to pay losses sustained by cargo on the Toluma through contributions in general average because the expenses incurred by the master were made binding upon cargo, and so the proper subject of general average contribution, not by virtue of any requirement of law, but because of a private contract between cargo and carrier to

which the Sucarseco was not a party, viz. the Jason clause in the bills of lading. This clause was upheld in The Jason, supra, and has come to be widely used and widely known under that name. It affords a means by agreement for parties in the venture to give to the master authority to act as agent for cargo for the purpose of incurring general average expenses which he would not have under the Harter Act as shown by The Irrawaddy, 171 U. S. 187, 18 S. Ct. 831, 43 L. Ed. 130. This Jason clause is not in any real sense a diminution of the rights cargo would otherwise have. On the contrary, it enables cargo to have the master as its agent at the time and place of the peril to act for it to make such sacrifices as may be timely and effective to avoid greater loss. And to secure that right, cargo agrees to contribute in general average though the Harter Act would otherwise excuse it from so doing. The Irrawaddy, supra.

It is said that losses sustained under such an agreement are too remote to be recovered from the noncarrying ship under the principles in this respect recognized in Robins Dry Dock & Repair Co. v. Flint, 275 U. S. 303, 48 S. Ct. 134, 72 L. Ed. 290; Mobile Life Insurance Company v. Brame, 95 U. S. 754, 24 L. Ed. 580; The Federal No. 2 (C. C. A.) 21 F. (2d) 313, and causes of like import. It may be accepted generally that a tort to one person does not extend in legal consequence to a third person who has [fol. 84] been harmed merely because he had contracted with the one directly injured in person or property by the tort. But the tort of the Sucarseco was not merely of that nature as it affected the Toluma's cargo. It was a direct contributing cause of the loss which was sustained by cargo. It made the expenses necessary. Since the Jason clause is valid, it was lawful for the owners of cargo to ship it at their own risk so far as that clause made the risk theirs. And their liability to contribute in general average under this clause is in no true sense the less a general liability imposed by maritime law than it was when a general average situation was created as a matter of law merely by circumstances occurring on a voyage. Always an essential element has been a common venture of ship and cargo on a voyage. Always the relationship of a ship to cargo and of cargo to ship has been based upon some contract of carriage express or implied. When-

ever such a contract is lawful and is such that cargo is bound to contribute in general average if a general average situation is created, it is the creation of the emergency which makes sacrifices necessary that causes the loss to cargo as much when the Jason clause in a bill of lading underlies general average liability as when a contract of carriage played its part in establishing the required relationship in a common venture at sea to support general average contributions without any Jason clause. The position which would be established for the Sucarseco is no more than to say that, since a cargo owner and the carrying ship need not make a Jason clause agreement, if they choose to do so, a tort-feasor may create a situation which does necessarily cause the cargo owner to make contributions in general average and then escape all liability on that score by saying to the cargo owner in effect: "My tort would not have injured you if you had shipped your goods without obtaining any benefits or assuming any obligations under the Jason clause." We cannot subscribe to the theory that the terms of the contract of carriage are of any concern to the tort-feasor, provided the legal relationship of cargo and carrier coupled with the occurrence of events for which the tort-feasor is legally responsible creates a general average situation that requires cargo to contribute. It may then recover such contributions from the tort-feasor as in The Energia, supra.

The further contention that, if Toluma's cargo recovers from Sucarseco, the resulting increase in the damages which that ship may offset against the claims of the Toluma in the division between them will in effect nullify Toluma's benefit from cargo's contributions to the general average expenses, cannot be considered sound. Of such a nature was the argument rejected in The Chattahooche, 17-U. S. 540, 19 S. Ct. 491, 43 L. Ed. 801.

Decree modified.

[fol. 85] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court-rooms in the Post Office building in the City of New York,

on the 14th day of August, one thousand nine hundred and thirty-four.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

AKTIESELSKABET CUZCO, Libellant,

vs.

SS. SUCARESCO, SUBMARINE BOAT CORPORATION, Claimant; West India Oil Company et al., Appellants

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is modified in accordance with the opinion of this court with costs to the appellants.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 86] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Aktieselskabet Cuzco vs. SS. Sucaresco. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 14, 1934. William Parkin, Clerk.

[fol. 87] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 86, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Aktieselskabet Cuzco, Libellant, against SS. Sucaresco, Submarine Boat Corporation, Claimant; West India Oil Company, et al., Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 1st day of November, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

(5614-C)

[fol. 88] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,152. U. S. Circuit Court of Appeals, Second Circuit. Term No. 524. Aktieselskabet "Cuzco," as Owner of the Norwegian Steamship "Toluma," Petitioner, vs. Steamship "Sucarseco," her engines, boilers, etc., Submarine Boat Corporation, et al. Petition for a writ of certiorari and exhibit thereto. Filed November 10, 1934. File No. 524, O. T., 1934.